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OFFICE OF SURFACE MINING BUDGET FOR FISCAL YEAR 1986

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ORIGINAL

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY AND THE ENVIRONMENT

OF THE

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

OFFICE OF SURFACE MINING BUDGET FOR FISCAL YEAR 1986

HEARING HELD IN WASHINGTON, DC
FEBRUARY 22, 1985

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OFFICE OF SURFACE MINING BUDGET FOR FISCAL YEAR 1986

FRIDAY, FEBRUARY 22, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 9:45 a.m. in room 1324, Longworth House Office Building, Hon. Morris K. Udall (chairman of the subcommittee) presiding.

The CHAIRMAN. The subcommittee will be in session.

Once again this subcommittee will take a look at the operations of the Office of Surface Mining, and specifically its fiscal year 1986 budget request. I will state at the top that more than any other time since passage of the Surface Mining Act of 1977, I am disturbed at the present status and future direction of the strip mine reclamation effort. Everywhere I look I see problems, and the most troubling thing I see is that the problems are getting worse, not better.

Reports of abuses of both the letter and spirit of the Act grow almost geometrically. The ability of many States to cope with their regulatory burdens is questionable. Adequate resources to address these issues at either the State or Federal level are not being made available. The Abandoned Mine Land Program never seems to fulfill its promise.

The entire Strip Mine Program, in my view, is in trouble. During the extended debate that led to passage of the law in 1977, the Congress was caught between those who opposed any kind of Federal controls over strip mining and those who said the only way to control its abuses was to abolish strip mining altogether, or at the very least have the Federal Government regulate it, rather than the States.

The Congress chose a middle path. The States would be entrusted with regulatory authority but only if they could meet minimal standards set forth in the Federal law. Everyone in this room knows that the implementation of the strip mine law has not been easy.

Following difficult initial stages of the program—marked by lawsuit and resistance—the early stability of the program was shattered by the excesses of Secretary Watt. As control of the program moved to the States, Secretary Watt embarked on a campaign he labeled a reorganization but, in my opinion, was a disorganization

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and demoralization, the impact of which was to fatally weaken the critical Federal arm of this program.

Today, when OSM is called upon to bail out the program in Oklahoma and Tennessee, and possibly Kentucky, and when severe enforcement problems in other States cry out for Federal action, OSM is simply not able to meet the challenge effectively. I don't think it takes an alarmist to say that the whole structure of the Strip Mine Reclamation Program is in trouble.

This committee has spent years examining problems that never seem to go away. The 2-acre exemption is a good example. First, it became obvious that this simple exception, which we added in an attempt to be fair and meet legitimate objections, this simple exception to the act's environmental requirements was being massively abused, especially in Virginia. After the problem was documented, the State said it had no authority to deal with it.

After hearings, lawsuits, and threats of Federal action, the State finally organized itself to address the problem. But, I am told, the 2-acre mines still flourish in Virginia and now the disease infects neighboring Kentucky. I will admit to being extremely frustrated by this kind of all-too-common pattern.

In Kentucky, a new form of abuse has emerged. In addition to the old 2-acre game, several thousand coal exploration permits have been issued to operators mining less than 250 tons.

These mines, of course, are not subject to the act's environmental standards—another exception we gave in an attempt to be fair. Enough coal is being produced from these mines to meet the demand of the spot market. Even worse, the State has no information available as to where these mines are even located.

When OSM ran the interim program we subsequently learned millions of dollars in fines went uncollected and thousands of violators were allowed to just walk away from their crimes. Under these circumstances the law was not respected, the Treasury was cheated and the important requirement that operators with outstanding violations not be allowed new permits could not be enforced. The reports I am receiving now indicate that in some States these problems are continuing if not worsening.

Today we will look at the 1986 budget request. At first glance, it certainly appears to me to be an optimistic document. It assumes that Oklahoma and Tennessee will regain primacy, but makes no contingencies for the possibility that the event will not materialize. It does not address in any way that I can tell the extremely serious situation in Kentucky which may very well require some kind of serious Federal response.

The Abandoned Mine Land Program is cut back by $43.6 million. The justification for this cutback put forward by the Department's budget documents bears no relationship to reality.

The budget states that the decrease "is proposed to better align financing and assure support for the States in the future, since recent appropriation levels have significantly exceeded receipts into the AML fund."

Everyone knows that expenditures from the fund never could and never were intended to match annual income. Over the limited life of the fund there never will be sufficient funds to reclaim all the abandoned pre-act mines and the grants from the fund should

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be made available to the States as fast as they can effectively spend them.

I know that we will not be able to put the program on a sound footing today, or even tomorrow or next week, but I hope that we can begin today. During his brief tenure, Secretary Clark gave the program his personal attention and that helped. Just this week, Secretary Hodel assured me that he, too, will take a personal interest in OSM and I am very gratified by his interest.

The time for wishful thinking and rosy optimism about the success and progress of the Strip Mine Program is past. We need to take a hardnosed realistic look at where we are and what it will take to start putting this program's house in order.

Mr. Seiberling was going to try to be here later, as one of the leading authors and sponsors of this legislation. He had a statement to submit. Without objection, it will be received for the record.

[EDITOR'S NOTE.—The prepared statement of Hon. John F. Seiberling may be found in the appendix. See table of contents for page number.]

The CHAIRMAN. The gentleman from New Mexico.

Mr. LUJAN. Thank you, Mr. Chairman. I am pleased to join with you in welcoming our witnesses for this oversight hearing on OSM today.

As you said, Mr. Chairman, there has been considerable controversy considering the functioning of this relatively new Federal Agency which is charged with carrying out the provisions of the Surface Mining Control and Reclamation Act of 1977. Some of this controversy is inherent with any new Federal program, while part of it really boils down to an honest difference of opinion on philosophy on what Federal policy should be.

There are always those who feel we are not moving fast enough when it comes to protecting the environment and some who feel that there should not be any coal surface mining at all.

You have pointed out the shortcomings, Mr. Chairman. But there has been considerable progress made at OSM since the Agency came into being. And I would be pleased to hear about those things.

I am pleased to welcome John Ward, a fellow westerner, as the new director for OSM, who will be our first witness today. I only have one difference of opinion with him. He indicated that he wanted OSM headquarters moved to Denver. I agree with him that it ought to be out west where the coal is. My only difference is that it ought to be in Albuquerque rather than in Denver.

I thank you, Mr. Chairman. And I look forward to hearing the comments of the witnesses.

The CHAIRMAN. Any other opening comments?

Very well. We will proceed.

Mr. Ward, we are glad to have you here in your first appearance, I believe, as Director. Be glad to hear from you.

[Prepared statement of Hon. John Ward may be found in the appendix.]

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STATEMENT OF HON. JOHN WARD, DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY BRENT BLAUCH, DEPUTY DIRECTOR; CARSON CULP, JR., ASSISTANT DIRECTOR, BUDGET AND ADMINISTRATION; CARL CLOSE, ASSISTANT DIRECTOR, PROGRAM OPERATIONS AND INSPECTION; BRENT WAHLQUIST, ASSISTANT DIRECTOR, TECHNICAL SERVICES AND RESEARCH; AND BOB EWING, ASSISTANT DIRECTOR, FINANCE AND ACCOUNTING

Mr. WARD. Thank you, Mr. Chairman, and distinguished members of the committee. I would like to introduce myself. I am John E. Ward, Director of the Office of Surface Mining.

I am pleased to appear before this committee and have an opportunity to present to you our proposed budget for fiscal year 1986.

The text of an opening statement has been prepared and submitted to the staff. I will not recite that material to you, but at this time I would like to take a short moment or two to offer additional comments to augment that statement.

As I was preparing for this hearing, I did note to one of the people with me that this, indeed, is my first experience in such an event, and they made the observation that, well, I guess the honeymoon is over, to which I replied, "My lord, I don't even remember being kissed." So I appear before you in somewhat of a tryo's role.

Analyzing the chairman's views, I would submit at the outset that in my view generally the law is indeed working, and generally this Agency is working. Certainly there are some problems, and I will touch upon those shortly.

My experience in private industry and as a member of the Coal Mine Land Reclamation Board for 5 years has demonstrated to me that the environment attendant to coal mining activity has benefitted in most instances. I would suggest to you, sir, that at least somewhere in the area of 90 percent of the coal produced in this country is produced by law abiding, innovative people. One has but to visit some of the current operations in those areas where mining by responsible people was conducted to realize that the attitude, the efforts, and results obtained by such people are examples of what the law was intended to do.

But like any law, we must not only maintain at the very least, but increase our attention to those operators who choose to work outside the law, resulting in detriment to the environment, and gain in competitive advantage over those in compliance.

This effort requires that our work in certain areas be examined and those functions strengthened. I would first like to touch upon the internal management of the Agency.

Early on, when I first came to Washington, I observed symptoms that reflected a lack of particular cohesiveness in the areas of assessment and collection and the Parker and Gasch circumstance.

And all of these aspects were related to what I characterized as financial and record management. As a mechanism to rectify those circumstances, we created a new directorate, termed finance and accounting. Elevating these responsibilities to the top management level of the Agency, we searched for an Assistant Director with experience in this important field and we selected Mr. Bob Ewing

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from the Department of Treasury, who has a great experience in the management of cash flows and tracking records.

Present ADP systems are being coordinated. The assessment process is being redesigned so that early collectability is possible and other activity in the planning and implementation of that division is intensifying with time.

Mr. Ewing is present and will be giving some details later on in the hearing.

It is our desire to avoid ad hoc, knee-jerk responsiveness to the problems as they come up and in order to prevent such a mode of doing business, we have embarked upon developing and designing a 5-year plan. When I first began talking to the people about it, I forgot where I was, and that 5 years certainly was not consistent with any lifetimes around Washington in many instances.

However, being optimistic, I felt that this would be a good approach to see if we cannot manage the Agency in some way that we have control over those issues that are constantly being brought before us, and plan ahead for them so that in the long run we know what we are going to do about these problems.

This 5-year plan includes the use of management-by-objective system. It is a term for reporting measures and we want to fortify this with the use of an objective management system which forces the Agency to look at the accountability of its managers in the tasks that are assigned to them, and the timeframes within which they are required to respond.

Furthermore, in my view good management of a Government unit takes advantage of ideas from people outside the Agency early in the planning stages. In this respect, we are extending our efforts to solicit and receive constructive advice from interested parties.

You and I, Mr. Chairman, have met on several occasions to exchange views. I value these exchanges and it is my intent to continue this approach.

I feel it is in our interest to encourage dialogs on an informal basis and not rely solely on hearings and comments generated through the use of the Federal Register.

A further example of this inclination is the possible use of advisory groups under the aegis of OSM. It is still premature to discuss with any authority; however, the concept needs more development. The idea would provide for groups of private, State, and Federal membership to discuss regional and national issues confronting the coal mine reclamation activity and a charge to these groups to form a concensus on how we might identify the successes and failures of the law and of the Agency, using on-the-ground measures.

It is difficult to translate what appears to be an abstract essence in terms of a quantifiable measure. Again, it is too early to describe with any intelligence, but I do believe that the idea is worth pursuing.

One more instance of our recognition that management problems are extant, and that we are sincere in wanting to alleviate those areas is the formation of two groups to examine some of the present systems utilized by the Agency.

Concurrent with your request, Mr. Chairman, to your committee that such effort be made, we asked that the Department of the Interior also create such a group to participate along those lines.

Paul Trause of Under Secretary McLaughlin's office has assembled some people and they are meeting with the staff of your committee coordinating the scopes of work.

We understand that the charge of these groups is to examine specific areas of activity and ultimately make recommendations in those instances where more effective management systems might be installed. We welcome such an effort and trust that constructive ideas should be offered as a result of this work for the benefit of the Agency. I best leave that particular topic, before I sound too masochistic.

The State Primacy Program is another area of high interest to us. This sphere of activity which I would briefly bring to your attention is the Federal-State relationship in the aspect of primacy.

I am concerned with some recent history of ineffectiveness of such relationship, and I am not prepared to fault any particular party in certain circumstances. At this time, Mr. Chairman, and members of the committee, you did touch upon the issue in Kentucky.

Yesterday afternoon the Governor of Kentucky, along with her secretary of natural resources, myself, and Steve Griles, executed a grant agreement whereby Kentucky acknowledges its responsibilities for staffing levels, and has agreed to the staffing level required by their program. Also, there are some conditions in the agreement that address the 2-acre situation, sir. I will be glad to provide you with a copy of this agreement.

The CHAIRMAN. Without objection, it will be made a part of the record.

[EDITOR'S NOTE.—The above-mentioned agreement may be found in the appendix following Mr. Ward's prepared statement. See table of contents for page number.]

Mr. WARD. There is a strong commitment shared by Secretary Hodel, the Department of the Interior and OSM that States have primary responsibility in administering and enforcing laws pertaining to the mining of coal in their respective States.

We intend to buttress that commitment in at least two measures. Currently, we are examining the oversight mechanisms now in place to discover if the changes are available to render a more effective and useful tool in State program evaluation.

It is too early to describe what possibilities there are of achieving that result, but we shall advise you of progress when we recognize it. It may also be an area where the aspect of on-the-ground measures of successes or failures can be noted.

This is in no way to imply that such an interest in its function will result in any laxity on our part in assuring that State programs are in compliance with the law. It is simply an attempt to obtain realistic analysis of that activity.

The statistical approach based somewhat on law is a useful tool, but such an approach must bear a relationship to a product. In this instance we must ask: "Do statistics reflect reasonably the condition of the coal mining environment?"

Another effort designed to strengthen our commitment to State primacy is the development and use of training and technical assistance programs. For the past year OSM has been assembling a

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training program intended for the purpose of training in the beginning State inspection personnel.

I understand we have a rather large enrollment of 500—the figure that I believe I heard—for training this summer. A technical assistance group has been established at the Western Technical Center in Denver and we have informed the State that various technical expertise is available in areas where they need help in processing permit applications.

Our hope is that this activity will provide the States with capabilities that are consistent in all respects at least to a minimal standard of performance as required by OSM.

We view these actions not only as representing our position that the States are our partners, but as a good investment when one considers the cost involved should the Federal Government have to assume authority in any given State.

This concludes my remarks, and I thank you for your forebearance.

Remembering why we are here, I will now move on to the business at hand.

OSM proposes a budget for fiscal year 1986 in the amount of $330.2 million. More than 75 percent of that budget—in the amount of $252 million—is earmarked for State regulatory and reclamation grants.

These grants support State efforts in regulatory and reclamation programs implemented by several thousand people throughout the States. In recognition of previous reorganization problems, OSM was exempted from the 10 percent across-the-board reduction of administrative expenses required of all the other bureaus. This is good evidence of the concern of Secretary Hodel's office that this Agency be given an opportunity to meet its responsibilities.

At this time, Mr. Chairman, I would ask permission to have some of my colleagues join me at the table to help me address your questions on specific issues, budgetary or otherwise, and I thank you, sir, and the committee for your attention.

The CHAIRMAN. Thank you. Will you bring your people forward and introduce them?

Mr. WARD. Yes, sir. On my far left is Brent Wahlquist, our Assistant Director of Technical Services and Research Division. Mr. Bob Ewing, the new Assistant Director of our Finance and Accounting Division, the man I just mentioned who came to us from Treasury. Next is Mr. Carl Close, the Accounting Assistant Director for Program Operations and Inspections. On my immediate left is Mr. Brent Blauch, who recently came to us from the State of Pennsylvania and is serving as our Deputy Director. On my right is Pete Culp, the Assistant Director for Budget and Administration.

The CHAIRMAN. All right. Secretary Clark had a policy of meeting with you on a regular basis. Is that going to continue with Secretary Hodel?

Mr. WARD. That is my understanding, sir. If it is not with Secretary Hodel personally, it will be with Under Secretary McLaughlin on a weekly basis.

The CHAIRMAN. What does this new agreement with the State of Kentucky mean with regard to primacy in Kentucky? What is your expectation?

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Mr. WARD. My expectation. This whole negotiation, in arriving at what I view to be a happy conclusion considering some of the alternatives, means that Kentucky is now committed to achieve their staffing level of 408 people by the end of August. We allowed them a several month extension of the first requirement because of their own personnel systems.

Once these 408 people are on, and the inspection staff is on, we will evaluate that performance through our oversight mechanism, and see whether or not that particular staffing level does achieve the efficiency and the quality of performance on the ground that is required of these programs. There are, as I said earlier, some conditions in the agreement touching upon the 2-acre exemption requirements requiring the State to develop and review the relatedness of public roads on each permit application.

I will point out several examples. They will implement their review of the existing 1,500 2-acre permits. And, again, I have asked Mr. Tipton, sitting behind me, who is our Field Office Director in Kentucky, and his knowledge is very intimate with the Kentucky problems, to be present and perhaps if my answers are vague, he may help us supply you with the detail.

The CHAIRMAN. That is fine. I understood you to say in Kentucky there are 1,500 2-acre sites?

Mr. WARD. Yes, sir. That is our figure.

The CHAIRMAN. How many in Virginia?

Mr. WARD. I am advised anywhere between 1,000 and 1,100 identifiable sites.

The CHAIRMAN. How many in Tennessee?

Mr. WARD. Tennessee, I don't know that we really know there, sir. But I will find out and submit it for the record.

[EDITOR'S NOTE.—At time of printing, the Department had not yet supplied the information requested by Chairman Udall. When received, that material will be placed in the committee files of today's hearing.]

The CHAIRMAN. Would you agree a good share of these, if not the majority, are phony, really not serious, legitimate 2-acre claims?

Mr. WARD. Sir, I have no personal knowledge that I would say that I could agree with that. My information, based upon what I hear from other people, is that maybe at least 50 percent of, quote, 2-acre permits are, in fact, not qualified.

The CHAIRMAN. Don't you agree in the computer age we ought to be able to have available the information on how many are in each State, who the operators are, where they are operating, and how many have not paid fines or abated violations?

Mr. WARD. I agree with that, sir. We are attempting to catch up with that age. We are in the process of installing computer systems that would provide us with quick information along many, many lines.

The CHAIRMAN. What went wrong with the attempt to get the computer system in effect? Shouldn't we have had this long ago?

Mr. WARD. Yes, sir.

The CHAIRMAN. You are moving as quickly as you can. What is your budget request for additional electronic equipment, computer capability?

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Mr. WARD. On the budget request; I will ask Mr. Culp if he can pick it out. We do have an ADP group that has been put together to come up with recommendations and assemble all of the inventories we have in the ADP area, so we can better coordinate the hardware and the systems needed to provide certain information along with questions such as you are directing.

Mr. CULP. Mr. Chairman, in terms of equipment, we already have a substantial inventory of personal computers, and we do considerable work with the Interior's Washington Computer Center, which is under the Geological Survey. In fact, the work for the Assessment Office is done through that center. So it is not a matter of being short of hardware. Where we need to do additional work is in the development of systems and software budget.

And in the budget in particular we have an additional $1.5 million over the current level to implement the computer systems that go along with the recent settlement of the Parker and Gasch court orders.

The CHAIRMAN. We are going to have you back a year from now. Where should we be, Director Ward? Where should we be on computer capability and capacity in terms of information a year from now?

Mr. WARD. I have not joined the many, many people who are conversant in the computer field. I would say that 1 year from now we will be very well on our way to being competent.

The CHAIRMAN. Let me ask you this question. What plans do you have to deal with the 2-acre exemption in Kentucky and in Virginia? What specific program or plan?

Mr. WARD. Sir, in those individual States—and I can ask Mr. Close to provide you with some more intelligent detail on that—the plans have not been coherent, I have to admit that. At least attention has increased in these areas. And I would ask Mr. Close to help you.

Mr. CLOSE. In the case of Kentucky, the State has a program for reviewing all 2-acre permits, including a paper review and on-ground review. During the on-ground review they are issuing enforcement papers, closing down the operations, or issuing notice of violations, whatever is appropriate.

That is proceeding at a fairly fast pace. We expect to see the initial survey of those sites completed this spring. In the case of Virginia, the Department is currently consulting with the plaintiffs over a possible settlement. That settlement would specify the Department's action on those cases.

The CHAIRMAN. You know, there is an important element of expectation in the coal business. A lot of the good law abiding companies have been adhering to the law, and they look around and see some of these wildcatters abusing the 2-acre exemption. The Director indicated just a few moments ago, maybe half of those things are a fraud on the public and have no basis in fact.

We reach a breaking point where nobody is going to comply with the law. It is like the tax system. I think it is vitally important that the Director and the Office of Surface Mining get on top of this and let it be known around the industry that we are going to enforce the law, that this 2-acre thing is going to be used as was intended, as an occasional rare use where we didn't want to put

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some poor operator to the trouble of going through a whole legal permitting process to get at a small amount of coal in an area 2 acres or less.

And I see wholesale violation not only of the law but the spirit of the law. I think it is going to affect the legitimate operators along with everybody else. I am really concerned about it.

And I will be watching your progress in this field.

Mr. WARD. Mr. Chairman, I would like to advise you part of my function in visiting with people that are associated with the coal industry, having worked for what I view to have been an innovative and law abiding coal mine operation, I am dismayed, as are the legal operators, that there are people out there—again, they are a minority, and I am not ignoring it because that is a minority—who are creating a general indictment of an entire industry.

I am concerned about that. I make it well known to people involved in the coal industry that I intend to get the scofflaws. And this Agency will do that, sir.

The CHAIRMAN. I am impressed with your determination. We will follow through and help as best we can.

Mr. WARD. Thank you. We are working on things. I understand that the laxness in imposing sanctions doesn't inspire people to obey the law. We are developing, partly inspired by the Parker-Gasch order, but also as a member of good business, in the ADP systems such facets as can be available for alternative enforcement.

We believe that once we get it in the system, and we have people who have not paid their fines, or who have illegal bond forfeitures, if they apply to get back into the coal mining business anywhere, we are going to apply the sanction of not allowing them to do that.

Mr. CHAIRMAN. There is a lot of psychology here, as I said. If the word becomes common in the coal industry that you don't have to obey the 1977 law, you can just ignore it, that the Director is not going to do much about it, the whole thing is going to fail. And it is important—if you follow through—I want to see some people fined, prosecuted, I want to see some tough action taken so people in the industry and others will know that the law is going to be upheld. And I appreciate your strong commitment to that opinion.

The gentleman from New Mexico.

Mr. LUJAN. Thank you, Mr. Chairman.

John, in 1977 we made a very clear-cut decision in the Congress that the States should have primacy in this area, and that the Federal responsibility was overview, research, in some cases—in many cases also reclamation.

Yet today no one says that everything is perfect in any Government agency, including OSM—yet today we find that same philosophical resistance to allow the States' enforcement—the same old theory that the Federal Government can do it better, with which I disagree.

But do you find that same basic philosophical difference within the Agency, or is that pretty well a thing of the past? Do you still encounter it?

Mr. WARD. There may be vestiges of that out there in the field, of which I am not personally aware.

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However, in discussing my view or my philosophy as to how this Agency should work with the States, I have told them that the days of confrontation and intimidation, if, in fact, those were the facts, are no longer going to be acceptable to me.

I see our role—I have used the word partnership—as one of cooperation and assistance with the States. Because we are in the same boat, I don't think we can stand in one end of that boat and point to the State at the other end and say your end is sinking.

If this law is going to work under the concepts that have been evolved, we need their help and they need our help.

Mr. LUJAN. Well, my concern is every once in a while you hear that complaint on the part of the States, and there is a natural tendency in almost all of the programs that I come in contact with of a certain reluctance on the part of the Feds to give you authority.

But I just wondered if you were still encountering that. We do—and naturally, I suppose, in the spirit, perhaps, of advice and cooperation, somebody gives the impression that they are ordering the States to do a particular thing, that the State naturally rebels, and we are told there is that reluctance to let go of the reins.

Mr. WARD. Yes, sir. Well, in that vein, if I may, I did not mention it in my opening statement. There were two slots that had already been assigned in OSM that were not filled when I got there. Those slots are designated as deputy assistant director for program and inspections for the West, and a similar slot for the East.

I have recently named people to those slots. There will be a man sent out West, so that we can coordinate more closely with the field office in the West, and that man will also have a special assistant who will bring the messages from the States and the problems and try to coordinate our capabilities in a more effective manner.

Mr. LUJAN. OK. One other question.

Last year we had six western Governors who expressed concern to this committee that only 5 percent of the Federal money collected for Abandoned Mine Land Program, that that is all that they were receiving, although these States account for approximately one-third of the coal tax revenues collected.

The expenditures from the fund are supposed to reflect both the area from which the revenue was derived and the national need.

First of all, I take it at face value that that is what they were receiving, only 5 percent, while they were putting in one-third. Is that likely to continue?

Mr. WARD. Well, sir, I cannot predict what the outcome will be. We have put out a proportionment approach as to how the funds will be apportioned among the various States. We have gotten a number of comments back and we are now at the point where I think there are approximately six options that we are looking at.

My preference is one which employs the historical production of each State and the national need as it is represented by inventories, and see what we can do, what kind of relationship those two facets bear to each other.

I cannot tell you whether or not it is going to satisfy people. I kind of doubt it. The paradox of this is that, as you mentioned, the western State production—they are getting their 50 percent back.

The paradox is the real need based on historic production naturally comes from the East, because coal mining was so active here for so many years, and that the mining of coal did not really take on a significant amount until the seventies. And now those States are capable of producing an awful lot of money and producing an awful lot of revenues for the funds.

And yet they come up short because they cannot show a historical production as to West Virginia, Pennsylvania, Kentucky, and some of the Appalacian States. So I don't know how to predict whether or not what is perceived to be inequities would continue.

But certainly as we proceed along in arriving at what we think is a reasonable decision, we will be consulting with interested members of Congress, because certainly their interest and the interests of their constituents would be affected.

Mr. LUJAN. There is no question about it. You are correct that naturally the abandoned mines are going to be primarily in the East. Their complaint was that the national need was being taken into consideration, but where the moneys are derived from, which should I suppose give equal weight, I don't think any of them were saying that they ought to get 50 percent, or a third of the money, but that the portion of where the moneys were derived from was not given sufficient weight in the balance. I can appreciate your problem. Thank you very much.

The CHAIRMAN. Mr. Huckaby.

Mr. HUCKABY. Thank you, Mr. Chairman.

Mr. Ward, are there any States that you are satisfied with their enforcement programs?

Mr. WARD. Are there any States——

Mr. HUCKABY. The programs you are satisfied with?

Mr. WARD. Yes; there are many States out there that are performing satisfactorily. Again, it is difficult in using the oversight mechanism to determine the quality of the program. However, since that is the program that is in place, that is the measure that we have to use.

I could probably name some States that I think are doing a very good job. Pennsylvania, I believe, is now inspecting more, has a greater frequency of inspections than OSM is able to obtain up there.

I could give you the exceptions easier, where there are recognizable problems. I could say States like Colorado, but I am sure there may be somebody in the room who would question that.

I have not taken a poll to come up with an adequate answer to your question, Congressman Huckaby.

Mr. HUCKABY. Has your Agency set up to try to model these States that you feel good, to see that they are working along similar to States that you are not satisfied with? As I recall in 1977 a lot of our conversation was the fact that we would take the best and try to use your Agency as such to disseminate, to have some uniformity.

Mr. WARD. Yes; as part of our obligation in the oversight process, we provide Congress with annual reports to those Congressmen of each individual State—of those Congressmen who are interested.

Some Congressmen have asked for a semiannual update, that they can analyze and take a look at the performance. It is hard for

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me to understand—I don't even know—what particular factors in any given State's evaluation is picked up more than another—whether it be frequency, the frequency of inspections per unit, the number of violations that are given, upon which they may draw their own conclusions as to effectiveness.

I mentioned earlier that the advisory board that we hope we can put into place—and, again, I don't want to be speaking out of turn, we are so early in developing the approach that it hasn't been discussed within the Department of the Interior with any substance, so it is just within our own walls. We do believe this is the kind of area where the advisory boards may help us in making those kinds of determinations in those regions where they will be concerned.

Now, I have asked for a table that I think we can pick out an answer to your question rather easily. Unfortunately, that table has not been completed.

But if you are interested, I would certainly provide you one when it is completed.

Mr. HUCKABY. In the States that you are not satisfied with, that basically we are not satisfied with, do you see this helping to make things better? Are you going to have to maintain control there?

Are we going to have to maintain control there? Are we going to have to revisit the law? What is the future scenario?

Mr. WARD. No, sir. I don't see where we would have to revisit the law. I think it is a matter where the Agency proceeds in trying to be more effective in making the law work, in recognizing where the law gives you certain directions and we better try to implement it in a manner that is in compliance.

For instance, the State of Kansas was in trouble awhile back, and my predecessor did write a letter under what we call a 733 provision that we felt the State was not performing, and that unless certain things were accomplished, we might have to consider the assumption of primacy for that State, until the program was developed and performance displayed to our satisfaction.

Over the last year or so, I am advised by our field office director that indeed Kansas has responded and improved in many, many respects its performance. I am not saying that it is up to meeting the criteria where we can say, OK, Kansas, here, we will turn the authority back over to you.

However, we are now planning what criteria and what timeframes are we going to require of Kansas to display their abilities so that we can indeed say in our judgment, "You are now competent to handle your own program."

There are several others out there, sir, where we have some specific problems, and when we recognize those, we try to work with the States so that—because the States take a great pride in having that primacy authority.

We want to help them exercise that pride. But it has to be done through an acceptable competence.

The CHAIRMAN. Mr. Craig.

Mr. CRAIG. Thank you, Mr. Chairman.

Director Ward, pleased to have you before our committee.

Mr. WARD. Thank you.

Mr. CRAIG. In your opening statement, you talk about a Secretary's directive to create an interdepartmental task force to exam-

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ine operations and to submit recommendations for management improvements. Has that been done? Or at what stage is that effort?

Mr. WARD. Mr. Trause of the Under Secretary's office has assembled a group. I believe it has a membership of five people of various expertise or areas of interest. Mr. Trause is in coordination with the members of the staff of this committee—Mr. Shafer, specifically.

And those two people are, I understand, discussing at this point scopes of work, so that there is no overlap of effort, and yet each of these factions may have some areas of interest that the others do not.

To answer your question, I believe we are meeting next week with Mr. Trause and that team, discuss the mechanics or the phases in which the work is to be done.

Mr. CRAIG. Will that ultimately come out in a single report or a variety of position papers on recommended changes? How do you anticipate the final product, and when?

Mr. WARD. I don't know. I have not heard how the protagonists intend to coordinate that. Whether it would be a joint report or two single reports, I don't know what their timeframe is.

I understand Mr. Trause's team within the next 30 days is going to acquaint themselves with certain written documents within OSM upon which to base decisions as to areas where they can better direct their efforts, so what the overall task will take, I am not certain, Congressman Craig.

Mr. CRAIG. Mr. Chairman, I think it would be valuable for this committee to have that document or documents when they are finalized.

As a basis of judgment, also at the time they are done, possibly the opportunity to view them with you what you view as valid toward recommendation, implementation of change, versus what is not valid, so we can get it up front early and not come down the road a year from now and someone saying, "According to this report, you have, or you have not performed," based on, I think, how you view it going into these kinds of recommendations.

Mr. WARD. I certainly will, Congressman Craig, and we will keep this committee advised. I understand from Mr. Trause that this is not a witch-hunt, but rather, an attempt to assist us, recognizing our problems that maybe we don't even recognize it, but to offer up some rather necessary help and advice, but certainly, we will provide you with that material.

[EDITOR'S NOTE.—The information requested by Mr. Craig may be found in the committee's files of today's hearing.]

Mr. CRAIG. I see also by your budget that OSM intends to increase it by 1.4 million, which represents 31 FTE's by establishing an Interagency Legal Service Department, and the justification of that action, citing new responsibilities resulting from court decisions and primacy takeover at Tennessee and Oklahoma.

Traditionally, this work has been the responsibility of the Department of the Interior's Solicitor's Office, a series of questions for you. Why does OSM feel the need to establish an in-house legal service team?

Mr. WARD. I will let that go up to Mr. Culp.

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Mr. CULP. The team that will be funded by that item in the budget will not be working as an in-house OSM legal team in the sense that they will still get their direction from the Office of the Solicitor and the Associate Solicitor for Surface Mining.

It is simply a matter that, because of the Parker Settlement Agreement and other issues, we need a large cadre of legal people who are devoted full time to our support, and it was a budgetary decision to include the resources in our budget, rather than in the Solicitor's budget, because it is a short-term requirement so closely related to other items in OSM's budget.

Mr. CRAIG. As I understand, they will be working under the direction of the Solicitor's Office and not OSM?

Mr. CULP. Yes.

Mr. CRAIG. From the information given, we have to assume the Solicitor's Office, Office of Surface Mining, doesn't have adequate personnel at this time to assume that workload?

Mr. CULP. These are personnel funded at this time under the Solicitor's budget.

Mr. CRAIG. Is it a transfer?

Mr. CULP. Yes.

Mr. CRAIG. It will not be a duplication of efforts or funds.

Mr. CULP. That is correct, sir.

Mr. DARDEN. Director Ward, there is a specific site in Chattooga County in northwest Georgia and the Alabama line which was mined in the late seventies and there was no site restoration whatsoever, and it has resulted in a tremendous problem of erosion in that area, which has caused quite a bit of concern by the residents.

I have been to the site, and was alarmed to see the total lack of enforcement that apparently had taken place as a result of the illegal activities by the mining company there.

Who was responsible for the enforcement at the particular time this occurred? What is our situation in Georgia as to who is responsible for enforcement? And what is the status of the restoration at this time?

At this time, I understand some funds have been made available, and some corrective action has been taken, but if you could give me an overview on that, I would appreciate it.

Mr. WARD. I refer you to Carl Close, who I understand is more conversant with the history of that problem.

Mr. CLOSE. This is one of the most complex problems I have run into. A great deal of the mining was done prior to the enactment of the Surface Mining Act, and regulated only by the State of Georgia.

Some of the area was mined and jointly regulated by OSM and by Georgia. There was some controversy between OSM and the State as to who is responsible for portions of that site. We have begun making AML funds available to cover as much pre-act work as we can.

That will not solve the entire problem, and we are not at a point where we have the entire answer yet.

I think this is such a long and complicated case, it might be best if we give you a report on that. We have prepared a summary of the circumstances on it, which is too lengthy to get into now.

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Mr. DARDEN. I realize the local emphasis here, I won't take the entire committee's time to go into this much depth over such a specific local problem, but I would appreciate a report on the issue, and also the current status, but who is responsible now in Georgia for enforcement?

Mr. CLOSE. OSM has the regulatory authority.

The CHAIRMAN. Mr. Mollohan?

Mr. MOLLOHAN. First, I would like to thank your Agency for the cooperation that you have given our office in regard to a couple of projects, but principally, in regard to our subsidence problems we are extremely grateful, and this indicates that the program is working.

Not too many weeks ago, I had a group of small surface miners visit in my Clarksburg office expressing a number of concerns. One of their concerns was the permitting process—especially the cost of getting started on a small site. They indicated that the cost in and of itself was prohibitive.

I am wondering if your Agency senses that that is a problem for small operators, and if it is being addressed in any way.

Mr. WARD. We are sensitive that it is a concern, and valid concern of the small operators in the cost of doing business.

I am not sure of what terms or the provisions that West Virginia uses in permitting coal mines. If somebody here is, I am not aware?

The process, I understand, Congressman. I have no answer for you on what West Virginia charges to process an application to mine coal. The process itself, though, is similar to ours. We are, right now, attempting to revise; we are certainly examining our entire permit process mechanisms with the view that we can still process the applications in a manner that is different but might be less costly and more relevant to the situations that are presented in each respective permit application. And, while we might not expedite—hopefully that will be one result.

We certainly are going to continue to require information that we are obligated to require under the law, but we think there might be a more efficient way to do it.

Mr. MOLLOHAN. The two complaints were time and money. I understand the money part is related particularly to the extensive studies that have to be conducted before permits are approved, and when the prospective mines are small, the cost of those studies can be prohibitive.

Is there some way to get around that problem?

Mr. WARD. I was just reminded that Brent Wahlquist, our Assistant Director for Technical Services, worked in West Virginia in the mining regulative agency, and could be a very good help to you.

Mr. WAHLQUIST. In his recent confirmation hearings, Secretary Hodel committed to reviewing the permitting process and seeing if there are ways this might be simplified and expedited, and so, we are undertaking that review of our permitting process. One of the principal focuses will be a concern for small operations.

However, there are basic requirements of the act that must be met.

Mr. MOLLOHAN. I understand that. Who in the Agency is looking at that?

Mr. WAHLQUIST. That is my responsibility.

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Mr. MOLLOHAN. Are you beginning to look at that right now?

Mr. WAHLQUIST. That is a commitment that was only made 2 weeks ago, and so, we are now really just scoping out how we will proceed on that effort in response to the Secretary's commitment.

Mr. MOLLOHAN. That effort would be to expedite the permitting process?

Mr. WAHLQUIST. Look at ways in which the permitting process might be simplified or expedited, and at this point, there are a limited number of ways that that could be done and still be in compliance.

We are not really interested in initiating another round of regulatory changes, but if it is required, we will certainly give that consideration.

Mr. MOLLOHAN. Are you really committed to the idea of simplifying the process and reducing the costs on the front end?

Mr. WAHLQUIST. I believe the Secretary is committed, and if the Secretary is committed, we are committed.

Mr. MOLLOHAN. Is there any kind of a timeframe?

Mr. WAHLQUIST. We have not yet developed a timeframe for doing that. That timeframe is currently under development.

Mr. MOLLOHAN. I understand all the standards of the act and the need for complying with them, of course, but I would be very interested in knowing of your progress. Evidently, it is a very significant problem, and it makes the permitting process prohibitive to some operators.

Mr. WAHLQUIST. Some things might take regulatory changes and others might not, and we would prefer to see what we can do within the context of procedural changes.

Mr. MOLLOHAN. Can you provide the committee with an update on the new subsidence insurance program?

Mr. WARD. We have designated $3.1 million in this budget for small operator assistance. Those are funds that can be employed to gather information necessary in the permit process.

I am sorry for digressing. For the subsidence insurance program, we are now developing regulations. Certainly as you are aware, a joint resolution of the last session that was attached to the appropriations bill amended the act to the effect that States can have the choice of using up to $3.1 million of their AML money to fund State insurance programs.

Last week, people from the Agency met with representatives from the State in exchanging ideas and views on how the regulations might best be assembled to accommodate, and if that is at all possible, all State circumstances.

We are discovering that a lot of the States have a concern about, can we get the $3 million now and put it in a fund, because our insurance commissioner requires certain procedures and funding in different manners, so the problem becomes one where States are constrained by laws that are not consistent with Federal requirements.

It is a matter that we are going to have to look into rather deeply and see what can be done.

Mr. MOLLOHAN. The question is one of conforming the State programs to Federal requirements?

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Mr. WARD. Yes, sir, and you may be hearing from, as I understand, on this subject, some of the State representatives today to better describe to you what their problems are.

Their insurance laws are such that——

Mr. MOLLOHAN. I am sorry, I am going to be hearing?

Mr. WARD. Well, this committee is.

Mr. MOLLOHAN. I thought perhaps I was unaware of something.

Mr. WARD. I don't have your calendar, but it is a problem where they have their own legal restrictions under their insurance laws that are not consistent or compatible with the Federal laws on funding projects.

Mr. MOLLOHAN. You say this in your budget justifications, that there are significant legal and administrative issues, and they will need to be resolved before proposed rules are issued for comment.

I suppose you are talking around some of those problems. What kind of a timeframe are you all looking at to issue those?

Mr. WARD. By the end of 1985, we hope to have some workable regulation out there.

Mr. MOLLOHAN. In West Virginia, we have a subsidence insurance program, which is probably not perfect, but the main stumbling block now is money.

Mr. WARD. Yes, sir.

Mr. MOLLOHAN. You cannot make any contribution to the West Virginia subsidence funds until you get these rules and regulations promulgated?

Mr. WARD. No, sir, we cannot. A lot of the problems are how do you draw down on the fund? The present Federal posture is, I guess between Treasury and some other agencies, that we have to keep the money here.

Whatever mechanisms are out there on how do we pay off claims, we have to draw down on each claim, or whatever.

Mr. MOLLOHAN. Do I have any more time, Mr. Chairman?

The CHAIRMAN. The gentleman has about half a minute.

Mr. MOLLOHAN. I do have several other questions, if I could submit them for the record.

The CHAIRMAN. Without objection, Mr. Mollohan will have some questions he will submit in writing, and you can reply.

Mr. WARD. Thank you.

Mr. CHAIRMAN. Mr. Lujan.

Mr. LUJAN. Mr. Chairman, I have one concern that has not really been addressed, and that is the question of the 2-acre exemption and the 250-ton exemption.

Congress is always very careful to not put undue burdens on small operators, and any time there is research or development programs, that we do not impose upon them the same restrictions as any overall operation, and that is not limited simply to mining.

We are very careful about that, and sometimes you open the door a little bit, and in some cases that little opening is used to drive a truck through.

We are concerned about, at least I am—you didn't address how we might be able to do something about that problem. Whether you issue regulations, I certainly think that it would be excessive to propose eliminating those exemptions, none of us want to do that, but can you do it by regulation, or by some model that States

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can follow, so that you are not faced with that criticism every time that you appear before the committee or before any committee?

Mr. WARD. Well, sir, in a conversation with the chairman the other day, we discussed the 2-acre exemption, and I understand his dismay with the circumstances that are out there.

Primarily, this is essentially an eastern mining problem.

Mr. LUJAN. Yes.

Mr. WARD. The intention of providing a 2-acre exemption, was very humane and sensitive, but again, it did create a situation where people could abuse it and in fact, that is going on.

Most of the States—to my recollection, only three States have in their law an exemption or a lessening requirement for people who want to operate on 2 acres or less.

There has been controversy on how do you measure 2 acres, what should be included in those measurements, and many, many court cases, Virginia as an example. The States that are not having problems are the States that did not take the 2-acre exemptions per se literally.

They found other ways to describe circumstances where a small operator could, in fact, operate, and yet, the monitoring of that operator was easier rather than trying to measure on the ground, what is going on underneath the ground, in terms of minimum tonnage.

Although I did originally come from the East, and I did work some coal mines out West, now, however, having been back here, I am awed by the intensity of coal mining out here.

Mr. LUJAN. My question is really directed at, what can you do? Is it within your scope of oversight and advise to go to the States and say, look, this is happening, could you change your law or issue regulations?

How do we solve the problem?

Mr. WARD. Certainly, more pressure will have to be brought in those States having the problems of the abuses, making sure that they are carrying out programs that at least minimize and treat this problem.

For our own part, we are going to have to engage in a more vigorous enforcement, and we should be able to address those abuses.

The logistics are a problem also in actually carrying out. If I might, I will ask Carl Close, who is more familiar with what the Agency and the States are doing in this regard?

Mr. CLOSE. I believe vigorous enforcement by OSM and the States will eliminate all but the legitimate 2-acre operators. The existing teeth in our regulations will pick up those who are attempting to abuse the requirements, and by applying those regulations totally to the process, we can eliminate most of those operators.

That will solve the greater part of the problem, I believe.

Mr. LUJAN. To raise the level of the question, that is the question, particular because we are going to be faced with the criticism and you are going to be faced with the questions every time you come in, and so, just kind of being very, very aware and raising the level of interest within that would be very helpful.

The CHAIRMAN. Some people ought to be shut down and fined and put in jail, do whatever you do under the law, 1,500 little loop-

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holes designed to effect special legislation turns into a truck hole. 1,500 boggles the mind, that many small operations nobody dreamed about in one State.

It doesn't take anything more than commonsense to know what is complying with the law and what is not.

The act, in section 528, we were trying to meet the objectives, we would require a huge bureaucracy and a huge permitting process for some activities that might not be regulated at all.

It says the provisions shall not apply to any of the following activities:

On the extraction of coal by a landowner for his own noncommercial use or for a landowner leased by him. We heard hardship stories by a widow who couldn't heat her own house; and number two, the extraction of coal for commercial purposes where the surface mining operation affects 2 acres or less; and three, the extraction of coal as an incidental part of State or local government to finance highway or other construction, and so on.

I suspect one of these days, the next ploy will be to finance the highways up in the hills, and take off the controls in that fashion. I hope, Mr. Director, you will deal with the truth and the real facts and not with this whole pattern of subterfuge that has developed where 2-acre mines suddenly sprung up all over the State.

Mr. LUJAN. One story that came out of that whole thing, a guy on the side of the mountain there, and he had all the regs there, he said:

> I don't need the light because I am outside all the time, and I don't know the identification on my belt, because if something happens, I am the only one there anyway, and I don't need a telephone over in the shack because if I call from inside the mine, there won't be anybody there anyway to answer the phone.

Mr. MOLLOHAN. Will the gentleman yield?

I think my operators would find this interesting. In this meeting I had with some small operators a couple of weeks ago, they expressed the concern that the exemption was not adequate, and there was some concern about the interpretation of disturbed areas being so broad, they were not really able to take advantage of it.

Maybe we should send them out to where these more imaginative operators are.

The CHAIRMAN. All right, Mr. Ward, thank you for coming today, you and your team, and we will be watching you.

We now have a panel of witnesses from the Western States, Mr. Gallagher, Mrs. Neilson, Mr. Barry.

Mr. Gallagher, please proceed.

[Prepared statements of Tim Gallagher, with the attachments, Dianne Neilson, and Hamlet J. Barry may be found in the appendix.]

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PANEL CONSISTING OF TIM GALLAGHER, CHAIRMAN, WESTERN INTERSTATE ENERGY BOARD, STATE OF MONTANA; DIANNE NEILSON, DIRECTOR, DIVISION OF OIL, GAS, AND MINING, DEPARTMENT OF NATURAL RESOURCES, STATE OF UTAH; AND HAMLET J. BARRY, DEPUTY DIRECTOR, DEPARTMENT OF NATURAL RESOURCES, STATE OF COLORADO

Mr. GALLAGHER. My name is Tim Gallagher, current chairman of the Western Interstate Energy Board, and assistant administrator for the Energy Division of Montana Department of Natural Resources and Conservation.

I am here this morning to provide some collective views of the western States on the proposed fiscal year 1986 budget and program for the Office of Surface Mining.

The State of Montana and my colleagues here from Utah and Colorado, along with letters from Wyoming and North Dakota attached to my testimony, will further document these shared concerns.

I would like to ask that they all, all of the attachments to our testimony become part of the official hearing records.

The CHAIRMAN. Without objection.

Mr. GALLAGHER. In the interest of time, Mr. Chairman, I intend to highlight the points that I have in my written testimony, while the written testimony will reflect some repetition of some of the issues that different members of the panel will speak to individual issues, and we will not repeat those concerns.

The three issues I intend to address are mine plan reviews, cost recovery, and permit fees, and the good news that Director Ward mentioned earlier, the formation, the potential formation of regional advisory boards, or groups, rather.

Over the past 4 years, the increase, the first issue is the mine plan reviews. Over the past 4 years, the increase in the OSM regulatory presence has far outstripped the increase in OSM support to the State for their primary regulatory programs.

Grants to the State for the period fiscal year 1983 to 1986 increased from $32 million to a requested $38 million in the coming fiscal year.

This is a 19-percent increase in direct funding assistance to the States. On the other hand, the level of the Federal regulatory presence during the same period tells a far different story.

In fiscal year 1983, the cost of the Federal regulatory program was $21.4 million, and in fiscal year 1986, this same presence is estimated to cost $34.6 million.

That is approximately a 62-percent increase. Similarly, the increase in the number of Federal employees for this function during the same period is from 375 to 561, or roughly a 50-percent increase.

In 1984, OSM sought a $2.7 million supplemental for the increased review and approval of mine plans in the Western States. No reductions have been carried forward yet during this same period, including previous and subsequent years, OSM issued a policy for funding cooperative agreements with the Western States that has proved to be detrimental to some of our programs.

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It is a policy designed to decrease support to the States and assure a continuing role for OSM in the review and approval of mine plans involving Federal plans.

The new and expanded Federal regulatory presence is specifically justified by OSM on the basis of mine plan workload factors that are quite disturbing, and I would like to quote from the OSM fiscal year 1986 budget justification, page 52:

> In addition, OSM will resume primary responsibility for reviewing operational and reclamation plan portions of mining plans. In the past, OSM has encouraged States to conduct these reviews through cooperative agreements.

Another disturbing section of that budget justification documentation is on the following page, 53, again:

> Section 511(c) required a midterm permit review in order to allow statutory reviews of mines repermitted in fiscal years 1983 and 1984.

And the quote goes on in my written testimony.

Taken together, these statistics indicate a steady growth of the Federal presence within a function that the States are supposed to perform under their primacy and cooperative agreements.

We are concerned when OSM continues to maintain that it must independently review mining and reclamation plans for NEPA purposes and Secretarial approval.

States have, and continue to take a strong exception to that position. States can work within the NEPA framework and be the lead agency for NEPA.

States with approved regulatory programs can be the lead agency on mine plan review with OSM staff as part of that review team. This is simply a matter of trust. Trust that the States are also capable of regulating the surface mining activities.

I invite those within the Department of the Interior who lack the trust in our State program to do the job, to come to Montana or any of the other Western States and work with us, and then determine where the regulatory capabilities lie.

With respect to the budget, I would not grant the cumulative increases in the mine plan review function. Those are the supplemental last year and the requested this year.

This combination of last year's initiatives could save approximately $3 million. Three years ago, OSM created two sets of environmental standards for funding under the cooperative agreements, and deleted funding on Federal lands from State cooperative agreement funds.

This did not make sense at that time, nor does it now. Mine plans cannot be partitioned by either land ownership or environmental standards for review.

If the current policy of cooperative agreement funding holds for these two new intrusions by OSM, then damage to some of the State-Federal cooperative relationships may result.

These policies represent a federalization of the regulatory process. OSM efforts should be redirected to supplementing the approved State regulatory program, not staking out the regulatory functions that it insists on undertaking in order to assure continued and major regulatory presence.

The next issue I would like to discuss in my oral testimony is cost recovery, permit fees. Last November, the GAO report, a GAO

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report on the recovery of costs for mine plan and permit review and inspection and enforcement activities, was released by the House Government Operations Committee and attached to my testimony are the specific comments from the Western States which were provided by Governor Herschler on behalf of his six Western States colleagues.

We think that such an approach is directed—and in the 3-page letter attached to my testimony is full documentation of the reasons why.

In order to put this matter to rest, we urge you to direct OSM in your committee report not to impose such a cost recovery fee on mining operations.

The final point I would like to make in this testimony is some good news, and it was mentioned earlier by Director Ward. That is the potential for establishing regional advisory groups.

Such groups would be comprised of the multiple interests involved in the regulation of coal mines. The groups would be organized around the larger mining regions and serve as a forum for discussion and resolution of larger issues affecting the implementation of the Federal program.

This is a move in the right direction, we see. It also moves the focus of resolving program issues out of Washington and into areas of mining and primary regulation.

We look forward to having the western advisory groups established within the next few months, and we hope Director Ward discusses it with his members in the Interior Department more fully, and we would be glad to work with OSM to achieve this goal.

Other points that are included in my written testimony which will be addressed by my two colleagues here are decentralization of decisionmaking and alternative program measures.

However, in closing, I want to mention two points that are included in the attached letter from the North Dakota Public Service Commission.

One is the use of the National Abandoned Lands Inventory in the apportionment of AML funds. It is very hazardous and its role should be minor, if that, and there are other and more equitable bases for determining the distribution of these funds.

Please note that this point is also raised in the attached testimony from Governor Herschler.

The other issue raised in the North Dakota letter is the AML program operations separates the funding for the engineering and design for the funding for construction. This seemed to be working well in the State of North Dakota, and that example may offer some assistance in determining the appropriate level of funding for the AML program in the coming year.

Thank you for this opportunity to comment, and I would like to ask my colleague from Utah, Dianne Neilson, and from Colorado, Mr. Barry, to discuss some additional concerns.

The CHAIRMAN. Ms. Neilson.

Ms. NEILSON. Mr. Chairman, members of the committee, good morning and thank you for the opportunity to appear before you this morning.

My name is Dianne Neilson, director of the Division of Oil, Gas, and Mining for the State of Utah, and I am here on behalf of the

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State, the Department of Natural Resources, and the Board and the Division of Oil, Gas, and Mining.

Mr. Chairman, as you know, the State of Utah has never hesitated to address shortcomings in Federal programs and agencies, nor do we hesitate to give praise and recognition where we feel it is deserved.

And it is in that light that we recognize that the Office of Surface Mining, through its new Director, John Ward, has made significant progress in the effective coordination of the State programs and OSM goals and objectives.

This has been evidenced in the institution and/or work toward institution of regional advisory committees, and referenced this morning by Director Ward, it is evidenced in the commitment to append State comments to an OSM oversight report, a promise that was made to the Sta' s last year, and will be carried out next year.

It is evidenced in a request for and commitment to strengthening technical training and assistance regarding specific program needs; and active, open dialogue between OSM leadership and the State representatives, industry and other interested parties, and the striving for a Federal-State regulatory partnership to enable both OSM and the States to fulfill their program responsibilities.

We see these changes as improving program effectiveness and efficiency, and even more, as marking a path of communication and cooperation between the State regulatory programs and OSM, and we would appreciate the committee's support of these changes.

Despite these improvements, problems do remain which require the attention of OSM and the committee. My prepared statement addresses four specific issues:

Decentralization, mine plan reviews, oversight issues, and AML program fund utilization.

Mine plan reviews and AML fund allocations, we support the comments just made by Mr. Gallagher and those who will be made by Chip Barry, representative from the State of Colorado, in other areas.

With regard to mine plan reviews, as I indicated, you take supports the concerns which have been addressed by Mr. Gallagher and the State of Montana.

Furthermore, because we have operated under a funding cooperative agreement, the State of Utah is in a new position to be able to evaluate the effectiveness of what is now being proposed as a Federal review, of mine plans.

OSM took the lead role in reviewing 8 permit applications on Federal lands within the State of Utah within the last 18 months, and we have encountered specific problems which are worth noting for the committee.

OSM's Western Technical Center undertook responsibility for those reviews with the intent of expediting the process, and yet, they have continued to miss deadlines, skip schedules and they have been no more effective than the State in reducing specific mine plan review periods.

Permits must be reviewed, findings made and permits issued in accordance with the State program, and I stress that this is not the

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same as the Federal interpretation of intent of a State program where primacy exists.

We feel that the western technical center perhaps, because of its role in handling these repermit reviews, has gained an appreciation for the intent of permitting and enforcing on the basis of the State program.

However, we continually see when decisions and comments go back to or come back from Washington, that there is a failure to appreciate that we are talking about enforcement of a State program on not the Federal program.

Coordination of permitting and inspection enforcement actions are the responsibility of the State programs where primacy exists. If OSM assumes permit review responsibilities that coordination becomes twice as difficult and the result is that the process of permit revision by notice of violation, or revision of notice occurs rather than permit revisions, which are based on consistent, well-planned changes.

In other words, we defeat one of the primary intents of the system of SMCRA and the State programs. In Utah's case, the State has determined that some of OSM's findings have not met the requirements of the State program, and we have been required to go back and take secondary actions in terms of stipulations to make these corrections.

Had the State conducted the reviews initially, many of the problems could have been handled with less duplication of effort and money. We feel OSM has more effective, less costly mechanisms for insuring adequate permitting actions on Federal lands.

They include technical assistance in support of State program needs, careful review of State programs to insure they provide as effective as Federal regulation, oversight reviews designed to measure program effectiveness, not statistical tabulation of numbers, and coordination and consultation between State and Federal attorneys to provide a better understanding and defense of Federal and State programs.

In the area of AML program appropriations, OSM through its fiscal year 1986 budget justification, is attempting to set a dangerous precedent in the reallication of AML funds. The fees paid to that account were designated for reclamation of abandoned coal and noncoal mines and OSM is proposing to fund a pay supplemental for operations and research from the AML appropriation, and there is no indication in the budget justification that this will be repaid to the account.

Such an expenditure is clearly outside the scope of section 401(9) of SMCRA, and there has been considerable testimony from the States supporting the predicted shortfalls in AML funds which will be needed to meet existing requirements through the life of the program.

This diversion only compounds that problem. OSM has incurred additional financial burden in Tennessee, because it failed in its original management charge.

To cover this failure through an unprecedented and unjustified allocation of reclamation funds, it only compounds the AML funding problem and whitewashes OSM Title V performance problems.

I appreciate the opportunity to have addressed these issues with you this morning, and I request your attention to those concerns.

Mr. LUJAN. Mr. Barry.

Mr. BARRY. I am Chip Barry, Colorado Department of Natural Resources, and I am here on behalf of Governor Lamm, and I have been here two or three times before.

Happy to be back.

Before I start, a short personal note that we are happy to have John Ward as head of OSM, and he came from Colorado, and he is a man with a lot of commonsense and a good perspective, and I have seen John be very tough on recalcitrant coal operators, and you can expect to see that in the future.

He is a man of extreme commonsense, and that has been lacking in OSM in the last several years. I have given you a written statement, and will not refer to it.

I want to talk about title IV issues, AML issue and budget issues with the title V program and oversight.

I will go right into the title IV issues. Last year, before this committee and other members of other Western States said we need some help on establishing some subsidence insurance program, and you were very helpful in inserting language in your report and inserting changes in the law through the authorization process which allowed subsidence insurance to go forward.

Most of that program has gone forward well. We have one, Colorado has one remaining kind of problem.

That is, what is happening is, we are seeing, on one hand, an attempt to take insurance concepts, unobligated reserves, capitalization funds, et cetera, and the Federal grant machinery, and they are trying to push those two things together and not very well.

Insurance concept and A-102 Federal grant concepts don't match. We want to establish in Colorado a pool insurance kind of scheme which requires that we have a fund of money which we can identify to pay expected losses under the subsidence insurance program.

What we are getting, not only from OSM, but from Treasury and the OMB, is that we can have a Federal letter of credit, which does not meet State insurance requirements for the kind of funds we have to establish.

I have had some hope over the last couple of days, we may be able to work this one out and if we can't, we may be back asking for a large wage clarification to help us do that.

The conceptual problem is insurance concepts regulated by State insurance commissions and Federal grant procedures, those two things, it is apples and oranges and a tough mix.

I will move on to talk about title V and budget problems. In the past, OSM has been critical of Colorado because they think we have been understaffed and underfunded.

Last June, we submitted a program, a budget proposal to our legislature, and after having OSM see it, which called for us to spend about $462,000 on the non-Federal lands portion of our State program.

Now, by law, OSM is required to fund 50 percent of that, or $231,000. The present OSM budget that John Ward was referring to, however, calls for them to only spend $198,000 on our program.

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The $30,000 is not a big deal one way or the other. I am concerned about the inconsistency, they tell us you have to have more people and more money and the law requires them to pay for half of it.

The budget comes out and they are not going with our increase. They can't have it both ways. I would like to see that addressed.

With that one item about budget, I will move on to title V.

Overall, Colorado remains concerned with the size, scope, and direction of oversight, and since last year and Tim talked about this. The oversight program has grown further and when we were here 1 year ago, we asked you to cut that budget a bit because it was a bureaucracy out of control. It still is.

The one good piece of evidence on that is, OSM puts out a manual, format, outline for State program oversight reports. Last year, that manual, it was forms, 46 pages long and this year, it is 73 pages long, and that is just the outline.

The oversight program has got a momentum of its own and sometimes it is unnecessary.

A related problem to that, and this has also been addressed, is the centralized decisionmaking in Washington, which is counter to the law, and it does not make good commonsense.

My example is a program amendment which Colorado submitted to OSM in August 1984. It was a simple program amendment making reference to changes in our program. We sent it to Albuquerque and that is nothing more than a mail stop.

All they do is forward the mail to Washington.

Mr. LUJAN. Be careful what you say about Albuquerque.

Mr. BARRY. They would be well-served by a field office that could make some decisions. They forward the mail to Washington, and Washington took 5½ months to look at it, and did not discuss it with us in the intervening 5 months, sent it back to us and it was pretty clear that they didn't understand the submission in the first place.

We knew Albuquerque could understand it but they had very little authority to do anything. This has really hurt the program.

I would like to see that change. John Ward is receptive to changing it, I think. I am pleased to say that, but I need to give you these kinds of examples.

Finally, my last concern, alternative measures to State performance, a battle over which the States are very concerned, and that is what oversight is all about. How are the States doing?

We testified here last year that we thought the measures being used by OSM to measure how things they were doing were inappropriate, and I don't think they have changed very much.

It is not totally true, but OSM measures how we are doing, but measuring how many miles we drove. They want to count beans, and we want to say how is the program doing.

We testified last year we need alternative measures. John Ward is receptive to that idea, but we have not seen any progress so far.

Some of my own ideas on this are that, here the concept here is to find out how the State program is doing, not how a particular mine is doing, how is the State doing?

You want to avoid meaningless counting and some possibilities for doing that.

These are our own ideas from Colorado. We need to look at the contemporaneousness of reclamation. Is it occurring at the time it is supposed to occur after mining and some gross hydrologic data in the West, at least.

That kind of gross measure may be appropriate. We need to look at wildlife populations and habitat, topography, and long-term stability of the land, the kind of thing where you can—a little bit more than flying over and saying it looks a little bit better than it did before.

I want to see some progress in that way, and John Ward is receptive to it. In closing, after last year's testimony, where I in particular was sharply critical of OSM, Colorado is subjected to a 10 times normal oversight procedure, and they came in with a whole lot of people and examined us up and down.

Out of that, they didn't find any significant problems. We can move forward from there. I thank you for your time today.

The CHAIRMAN. I hope you will get in touch with the committee. You don't have to wait a long time. We've got a staff here, and we will look into some of these things.

I am sort of frustrated today, but I am going to make this damned thing work if it takes another 7 years.

Mr. BARRY. You were out of the room when I added this one note, I sat on the Reclamation Board with John for years, and he will be very tough on recalcitrant coal operators. He is a man of ultimate common sense, and you will find that, too.

When he grabs hold, I think you will be pleased. I expect to be pleased.

The CHAIRMAN. You encourage me.

Mr. Lujan.

Mr. LUJAN. Thank you. You are correct in the overall concept of your statements, it is difficult to let Federal agencies and recognize that States have some expertise in any field, not limited to OSM.

The Department is very fond of saying, our management is by objective as opposed to what you just said. I am wondering, do you get the opportunity often to sit with the Director and point out these things, like Mrs. Neilson said, you have got done any better than we have in mine plan approval.

You are taking just as long or longer? Do you get that opportunity to sit down with the Director and say, what is on your mind?

Mr. BARRY. I think we have not had that opportunity under previous directors, at least, as much as we might like. Under John, we have already seen a good deal of outreach effort on his part.

His testimony today about establishing a Director in the West and who will have a special representative who is going to be in charge of keeping those relations straight, that will be very helpful.

If I have any negative comment, we did have some Western States put together a panel to comment on OSM's budget to make some comments, because the budget drives everything else, where you go, what can you pay for, and how are you going to do it?

We had Mr. Neilson from Utah take a look at that, and offer a good deal of advice, none of which was taken. Dianne, you may want to add something?

Ms. NEILSON. Sir, I think we have seen significant changes since Director Ward has come in. And we are encouraged with the fact

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that not only is he available and interested, not only in talking to us, but also in listening and discussing with us. We are encouraged to see that same attitude is occurring within his Washington staff.

And we are encouraged by the fact that the individuals who we do talk with more frequently on a daily and weekly basis, the directors of the Western Tech Center, and the field office in Albuquerque, we hope through decentralization, through a deputy in the Western States, will have more authority, more communication, more say, more response. And so we are encouraged to see that communication moving down.

And we certainly hope that there is an improvement. We see signs that there certainly should be.

Mr. GALLAGHER. I would like to echo, I agree with both my colleagues. We are very optimistic. We tend to be eternal optimists dealing wth OSM. But we do see the Department moving in the right direction and we are looking forward to a better future.

Mr. LUJAN. Hopefully next year you can come and say everything is fine.

Mr. BARRY. One reason I think we are all optimists here today is I think between us we have no 2-acre operation.

The CHAIRMAN. Thank you very much for coming today.

Our next panel is Mr. Galloway, Mr. Lyon, and Mr. Dean.

As always, we are running a little late. We have one more panel to follow you. So if you could give us about 10 minutes of summary, we would appreciate it very much.

[Prepared statements of James Lyon, L. Thomas Galloway, and Norman Dean may be found in the appendix.]

PANEL CONSISTING OF JAMES LYON, DIRECTOR, CITIZENS MINING PROJECT, ENVIRONMENTAL POLICY INSTITUTE, L. THOMAS GALLOWAY, COUNSEL, SAVE OUR CUMBERLAND MOUNTAINS, AND NORMAN DEAN, DIRECTOR, PUBLIC LANDS AND ENERGY DIVISION, NATIONAL WILDLIFE FEDERATION

Mr. LYON. Thank you, Mr. Chairman. I think for purposes of coordinating our testimony, I ought to lead.

I am James Lyon, director of the Citizens Mining Project of the Citizens Mining Project of the Environmental Policy Institute. EPI is a nonprofit, nonpartisan, public interest organization dedicated to representing citizen concern regarding the impacts from energy, water, and agricultural development. In the 1970's, EPI worked for the passage of the Federal Surface Mine Control and Reclamation Act.

After Congress passed this landmark legislation in 1977, EPI established the Citizens Mining Project to monitor the Office of Surface Mining and the States' compliance with the law. In addition, the project assists coalfield citizens to better understand and exercise their rights under this act. Since the act's passage, EPI has regularly testified before this committee regarding the status of the act's implementation and enforcement, and the adequacy of OSM's budget to meet its mandated responsibilities.

The Office of Surface Mining is plagued with severe problems in its implementation and enforcement of the act. Many of the Agen-

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cy's problems have been well documented over the last several years.

Some of these problems are a direct result of reckless initiatives of the Watt administration. Others have been created more recently as a result of the Agency's inability, or unwillingness, to respond to the certain State enforcement failures. At the time that these problems were first surfacing, OSM and certain States often explained that these were programmatic paper problems and not on the ground environmental abuse.

That, however, is not the case today in the coalfields. As Mr. Galloway will point out in his testimony, we are now seeing a return of systemic mining abuse of pre-act severity.

Appearing over the last couple years are thousands of new 2-acre mines, thousands of illegitimate coal exploration sites, and thousands of acres of new unreclaimed lands. OSM has not, nor cannot, deny the existence or extent of this new abuse. So the reasonable question remains: What is to be done about it?

In reviewing the OSM's fiscal year 1986 budget, we fail to see any resources being made availbale to respond to these new problems. Furthermore, in meeting with OSM, officials were unable to tell us how they anticipate meeting the increased oversight and enforcement workload associated with these problems with existing resources. Therefore, we must conclude the OSM does not have the resources nor the intention to respond to this gross abuse.

One of the central purposes behind the Surface Mining Act was to stop systemic mining abuse in the field. Certainly this too must be OSM's top priority. However, OSM apparently doesn't see it that way.

OSM needs more inspectors. We strongly recommend that resources be diverted from less priority programs within the Agency, or certainly within the Interior Department, for that purpose.

We have watched OSM very closely over the years with growing dissatisfaction. It is an Agency that has been subject to immense political pressure inside the Interior Department. During the debate prior to the act's passage, Congressional members voiced concern that OSM, as a regulatory agency, must be insulated from prodevelopment factions within the Government.

It was recommended that OSM be placed under EPA rather than the Interior Department which already had a dismal record of regulating water quality, and mine health and safety. Past failure in these areas prompted Congress to remove these responsibilities from Interior's jurisdiction.

However, OSM was, in fact, placed in the Interior Department's realm, but with promises of insulation. Over the last several years, we have witnessed a deterioration of that insulation.

If the Agency continues to prove unwilling to enforce this law, and if its responsibilities continue to be undermined by prodevelopment forces within the Department, we will have to consider calling for the total transfer of OSM functions over to EPA, for the sake of saving the act's effectiveness. We would, of course, continue supporting this committee's oversight jurisdiction.

We are deeply concerned with other portions of the OSM budget as well.

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OSM proposes to return primacy to Tennessee on June 1, 1986, and has budgeted its Federal program accordingly. Despite the fact that a bill, essential for this action, is very uncertain for passage in the Tennessee legislature this year and despite the fact that industry is split over the issue, that citizens organizations in the State strongly oppose such action, at this time, and prior to OSM opening up, not to mention considering public comment, the Agency has apparently already made up its mind. We question where OSM will get or borrow the funds to continue its Federal program in the State if a bill is not passed.

For much the same reason, the lack of public input at this time, we are very concerned about the Oklahoma situation as well, which does not entail a State legislative package, but certainly public comment should be reviewed.

Regarding the State's share of the Abandoned Mine Land Fund, OSM is recommending a reduction of $46.5 million from State share grants. The Agency as we all know has been extremely reluctant over the years in releasing this money back to the States for reclamation.

Once again, OSM is sitting on money. This time its excuse is the need to ensure long-term management stability of the fund.

They are now appropriating—for reasons they are appropriating more funds to the States than they are collecting in the field. This argument is inconsistent with the congressional intent of title IV.

There is a finite number of abandoned mine sites in the coalfields. If the States show they can adequately handle more money to address more reclamation then OSM should give it to them now, not over a period of years.

It will always be more economical to reclaim abandoned mine lands today than it will tomorrow. We are aware that some States have not been able to spend the full allocation from last year.

And in those cases EPI does not support further increases. We do, however, call upon OSM to assist these States to correct any possible problems they are experiencing.

One of OSM's primarily responsibilities under title IV is the direct response to emergency problems by the abandoned mine sites. Such problems include cave-ins, mud slides, mine fires, and the like.

OSM has currently run out of fiscal year 1985 appropriated Federal share dollars for emergency response. According to OSM, it has had to postpone its response to several emergency projects until it obtains approval for an additional 11 million.

Such postponement in our eyes is unexcuseable. Furthermore, the Agency has recommended only $11 million for emergency response for fiscal year 1986. This recommendation was made despite the fact that they are spending approximately twice that much over the last couple of years.

Clearly they are not being realistic, and I think they are inviting further delays in responding to serious problems. Once again, the Agency is seeking to abolish the Rural Abandoned Mine Land Fund despite provisions in the act and congressional support for it.

There will be some citizens behind us that will testify to that fact. OSM's argument has been that the States are better able and

more efficient to administer the RAMP projects than the Soil Conservation Service.

However, we cannot find any indication where OSM has transferred or earmarked the $6.4 million SCS RAMP reduction over to the States for administering RAMP projects in lieu of the SCS.

In our eyes there is not a transfer of powers for a more efficient management situation. What they are attempting to do is simply abolish RAMP and its intentions that Congress came up with.

And at this point I would like to pass on to Mr. Galloway.

Mr. GALLOWAY. I am Thomas Galloway. I am here on behalf of Save Our Cumberland Mountains, an Appalacian citizens group.

Since I only have a few moments, I would like to concentrate really on one issue, that is the growth abuse, which has been the major focus of this hearing, and on the adequacy or lack thereof of OSM's proposed budget to deal with the abuse.

The abuse, as everyone knows, takes many forms. Two acres has received a lot of attention.

The megabuck abuse, the 2,000 unreclaimed station orders, the coal exploration abuse, the 2,800 exploration notices, the forfeited bonds, the interim program, onsite construction exemption abuse and so forth.

There is absolutely no question that there are at least 6,000 to 8,000 mines unreclaimed that were mines subject to the act. And when I say unreclaimed, I do not mean technical flaws. I mean basic problems. Spoil over the downslope, blackwater discharge, land slides and so forth.

Before turning to the budget, I would make one note about the 2-acre abuse. There seems to be underlying understanding that the 2-acres abuse is solely a bunch of very small operators, marginal operators out there mining these little small acreage.

That is simply not the case in Virginia. The best estimate is 75 percent of the 2-acre abuse in Virginia, that is 1,000 to 1,100 mines, are contract mines for large operators.

The major operators involved in the contract abuse are with R. Grace, Sun Co., and the Pittston Co. In most situations it is the employees of the Pittston Co., Clinch Field Coal, or the subsidiary of Sun that duly do the environmental destruction.

They are the people operating the bulldozers, they are the people pushing the spoil over the downslope and making the money over the environmental degradation. In Virginia, the main problem is not the small entrepreneur. It is the very large conglomerate operating through its contract oeprations.

Most of the so-called phase-up work is done by the employees of the large company, claiming the abuse. The surveying of the 2-acre sites are done by the surveyors of the large companies, such as with R. Grace and so forth.

There is absolutely no question. We have microfilm on the 1,100 mines from the State inspection files. They show contemporaneous statements by these employees, while they are sitting on the bulldozers, while they are doing the work that results in the degradation.

Now, turning to the budget, and I will keep on Virginia for a second. The State of Virginia will not enforce against these 1,100 mines. They so informed the Office of Surface Mining.

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My understanding is that to deal with these 1,100 mines in its current budget, OSM can allocate at the very most one inspector. Utilizing the budget assumptions that OSM utilizes in its inspection workload, that would mean in a number of cases it would be approximately 14 years from the time of the violation to the time of the inspection at which time presumably enforcement action would take place.

I think that comment needs little explanation or explication. It states the obvious. The OSM budget does not even mention 2-acre abuse. It allocates no resources.

It is not a secret to know that there were resources proposed by OSM in its initial budget, and that they were cut out as the budget made its way through the Department of the Interior bureaucracy.

I would suggest that for the Surface Mining Act to have any real meaning it must be able to prevent this irresponsible mining. For the fiscal year 1986 budget to have any meaning, likewise it must propose funding that is adequate to address the problem in some reasonable and rational manner.

The only abuse issue that the OSM budget deals with is the so-called megabuck abuse issue. And it proposes moneys to implement the settlement agreement that I signed with the Government on behalf of the client I am representing today on October 15.

However, although I have devoted 4 years to the case, and many, many, many hours to it, I cannot tell from the OSM budget how they plan to utilize their proposed money.

And I do not—and I respectfully suggest that this committee nor the Appropriations Committee can tell in any reasonable way whether the money OSM asks for is adequate or not to deal with the so-called megabuck problem and implement the court orders and the settlement agreements which we have entered into with the Government.

I would close by saying that obviously there is much more at stake here than the fiscal year 1986 budget. What is at stake I would respectfully suggest is whether the act can be enforced effectively in situations of gross abuse. As I have indicated, the form of the abuse varies.

Some is by large companies, some by small. Some abuse occurs at marginal operations. Other abuse occurs at operations backed by very wealthy and politically prominent individuals.

The most effective enforcement strategy will vary from site to site and area to area. The act provides sufficient enforcement tools to deal with the abuse. Section 510(c), as Mr. Dean will discuss in a moment, is a very powerful tool which can be used.

Section 518(f), which allows the piercing of the corporate veil, and acts against corporate officers and directors, is another powerful tool. However, while extra resources will not solve the problem, without these resources there is absolutely no hope that the abuse will end.

If we do not act now, we will have acquiesced in a system of regulation that allows a large number of mines and operators to ignore the act with immunity.

It is inevitable in such a situation, as the chairman has suggested, that noncompliance will increase, because of, one, the competitive disadvantages suffered by those complying with the act, and

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two, the fact that noncompliance produces little risk of sanction. Thank you.

Mr. DEAN. Mr. Chairman, members of the committee, I am Norman Dean, director of the Public Lands and Energy Division of the National Wildlife Federation. I greatly appreciate the opportunity to testify today on behalf of our 4.1 million members and supporters.

Mr. Chairman, it is tragic that despite the Surface Mining Act, the efforts of this committee, and millions of dollars in Government funding, widespread and indefensible abuse of the environment by surface mining operators continues to take place in this country.

Director Ward said this morning that he felt that the surface mining law was working. Well, in our view the law is not working when thousands of mines have simply ignored the law.

The law is not working when at least $140 million in fines remain unpaid. The law is not working when over 2,000 orders to seize illegal mining activity and repair the damaged environment have been ignored.

The law is not working when over $30 million are owed into the Abandoned Mine Land Trust Fund. And the law is most certainly not working when over 5,000 mines have illegally avoided Government regulation altogether by hiding under the guise of the act's 2-acre exemption, or by masquerading as coal exploration operations.

In our view, contrary to that of Mr. Ward, the law is not working for citizens, it is not working for industry, and it is not working for the taxpayer.

For a variety of reasons, the normal Government enforcement techniques have failed to stop flagrant abuse of the environment. Direct court enforcement of Office of Surface Mining orders, fines, and fees has made only a small dent in this serious problem.

I am here today to urge the committee to encourage the Office of Surface Mining to use an alternative tool for stopping this ongoing abuse.

In our view, the Office of Surface Mining should be encouraged to strongly implement section 510(c) of the Surface Mining Act by denying new mining permits to anyone who controls the company with an outstanding violation of the law.

Nothing in our view will stop abuse faster than the prospect that lawbreakers will no longer be permitted to mine coal.

How should such a 510(c) enforcement system work? It would be relatively simple. The Office of Surface Mining would maintain up-to-date computer lists of those entities which have outstanding violations of the Surface Mining Act and lists of all those persons who own or control such entities.

Then whenever an entity applied for a permit to mine coal, OSM or the State regulatory authority would simply check its computer lists to determine whether that entity or person controlled by that entity had an outstanding violation of the act.

If they did have an oustanding violation, they would not be issued a permit to mine coal until the violation was either corrected or an abatement plan approved for correcting the violation.

Now, obviously the heart of such a system would have to be complete and accurate computer records of all major types of viola-

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tions. Among the category of records that should go into such a system are lists of persons who have not paid moneys into the Abandoned Mine Land Trust Fund, lists of persons or entitites who have unpaid 518(h) penalties and 518(a) penalties, records on unabated cessation orders and State enforcement records including unabated cessation orders and uncollected penalties.

In response to the recent joint settlement of the Parker and Gasch cases, to which the National Wildlife Federation was a part, the Office of Surface Mining has requested a fiscal year 1985 supplemental budget appropriation of $2.6 million.

We strongly support the need for a supplemental request. However, we have been unable to determine from the budget documents how much of the request made by OSM is for the computer system contemplaterd by the court settlement. It is also unclear to us how extensive the computer system will be.

In testimony this morning, and in the budget documents, OSM implies that its system will be limited solely to the failure to abate cessation orders and to the civil penalties covered by the Gasch and Parker court settlement.

Now, if that is the case, the Office of Surface Mining in our view is making a serious mistake. The court settlement does not include several of the most significant categories of violations that logically belong in a 510(c) enforcement system.

As I have outlined, the system should contain nonpayment of AML fee data, nonpayment of 518(a) data, and State enforcement records including cessation orders and 518(h) penalties.

None of these were within the scope of the Parker and Gasch settlement because none of them were within the scope of the lawsuits. It simply does not make sense to develop a major computer system and not include within its data library much of the most important and useful information.

Now, in conclusion, Mr. Chairman, we urge this committee to support a supplemental appropriation which not only implements the Gasch and Parker settlement, but goes further.

We urge you to press OSM to build a complete, efficient, and comprehensive computer data base for enforcement of section 510(c) of the act. That system should include all major categories of violations of the act and not be limited to the Gasch and Parker court settlement.

Such a 510(c) system would appear to offer in our view the best hope of bringing to justice that small but significant minority of coal operators who continue to flagrantly violate the law and abuse the environment. Thank you.

The CHAIRMAN. Thank you. You have been very helpful. You have provided a lot of information that we need trying to ride herd and oversee the enforcement of this law.

Did you gather from—Mr. Dean, did you gather from Mr. Ward's testimony this morning that he opposes including these additional information items in the computer system that you mentioned in your last couple of pages of your testimony?

Mr. DEAN. When I heard one of his staff indicate was that they had requested $1.5 million to implement the computer system required in the Parker and Gasch order. There was no mention made of support for extending that system.

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I personally don't know whether Mr. Ward would support or oppose such an extension.

The CHAIRMAN. It makes a good deal of sense. There is no point of putting all the information in there, all the violations——

Mr. DEAN. Not only it doesn't make sense, but one would think if you are going to spend the money to put the system together, the hardware, the software, that there would be a small incremental investment to add this additional useful information.

The CHAIRMAN. When you are talking about a $100 million that belong to us hard-pressed taxpayers, it does not make sense not to get it in there.

Mr. DEAN. You would think that the system would be cost effective. That given that we have over $170 million in outstanding fees and penalties due to the Federal Government, that such a system within several years of its operation could easily recover its initial cost.

The CHAIRMAN. In several months, I would think.

Mr. Lujan.

Mr. LUJAN. Thank you, Mr. Chairman. I have no questions. It certainly doesn't make any sense that such a system wouldn't be in place already, and not have to wait for a court order to do it.

With the magnitude of the problem, how are you going to know who is causing the problem if you don't have such a computer system. Thank you.

The CHAIRMAN. You have been very helpful. We appreciate your coming today.

Our last panel is Mr. Mankamyer and Mr. Hoffnar.

Gentlemen, we are glad to have you here today. We are going to have to finish up here in the next 10 minutes or so.

[Prepared statements of David Mankamyer and Bernard Hoffnar may be found in the appendix.]

PANEL CONSISTING OF DAVID MANKAMYER, CHAIRMAN, WESTERN PENNSYLVANIA COALITION FOR ABANDONED MINE RECLAMATION, AND BERNARD HOFFNAR, SUPERVISOR, BROAD TOP TOWNSHIP, PA

Mr. MANKAMYER. Mr. Chairman, I would like to submit for the record a 3-page testimony and then read from the summary in the back in the interest of time.

The CHAIRMAN. That will be part of the record.

Mr. MANKAMYER. I would also like to submit to the members photographs of before and after reclamation sites in western Pennsylvania.

Mr. Chairman, committee members, and honored dignataries. My name is Dave Mankamyer of Somerset, PA, and I am honored to have the opportunity to present to you, the leaders of our Nation, what we in western Pennsylvania feel is a chronic problem and an important issue in our area.

Billions of tons of coal have been mined, thousands of acres of previously productive land, and thousands of miles of streams have been degraded to the point of virtual uselessness. Also, along the path of this destruction hundreds of health and safety hazards have been created. I am speaking of abandoned mine lands which

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we live with day in and day out. We thought sincere attempts to resolve this problem would be initiated with passage of the Surface Mining Control and Reclamation Act of 1977. As yet an attempt at full scale reclamation has yet to occur.

Our coal resources in western Pennsylvania have gone to support not only World Wars I and II, but also the American Industrial Revolution which opened up the opportunity for our Nation to prosper as a whole. The only complaint we have is that while the remainder of our country has prospered we have been left with hundreds of health and safety hazards and an equal amount of environmental scars.

With full funding for the Rural Abandoned Mine Program or RAMP, we, the local citizenry, have the opportunity through our county conservation district and county RAMP committee to have a voice in a federally administered voluntary land reclamation program. The Federal Government by the same token can receive the benefit of our local knowledge and experience on these project sites.

Another benefit of an active Rural Abandoned Mine Program would be the boost to our staggering local economy. With the unemployment rate ending 1984 at 15.8 percent in Somerset County and having reached a high of 21 percent the previous year we are in dire need of the turn of millions of dollars drained from our economic base.

Furthermore local businesses provide local resources to stimulate additional local trade. To put our people back to work on the scars left by our fathers would not only restore the personal pride of our citizens but return their faith and pride in Government overall.

Perhaps one of the most depressing aspects of not restoring our abandoned mine lands is the degraded status of thousands of miles of otherwise high quality water. In western Pennsylvania we have the quantity but not quality of water to accommodate practically any type of activity or industry requiring a clean water resource.

Mine reclamation programs and more environmentally sound mining are making a difference, but we can't afford to quit now when the work is just beginning.

Being not only a conservationist, a businessman, and a member of my community, but also an American, I ask on behalf of the people of western Pennsylvania and the coal fields across the United States that the members of this committee and the full Congress authorize full funding for the Rural Abandoned Mine Program administered by the USDA Soil Conservation Service.

Full funding levels for this program must be approved by Congress which then should instruct the Department of the Interior, Office of Surface Mining, to pass the authorized amount into the Department of Agriculture for use by the Soil Conservation Service. Thank you.

The CHAIRMAN. Thank you, Mr. Mankamyer.

Mr. Hoffnar.

Mr. HOFFNAR. We have come here from Pennsylvania. I am a locally elected official. I am the lowest local elected official in the State of Pennsylvania—township supervisor.

We have attained some noteriety in the last few years since local government is the best level of government—I am here to tell you

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our feelings. And I hope that it somehow can get transmitted to those people who make decisions about who does the best thinking.

My experience and our community's experience with the Abandoned Mine Land Program has been one of real frustration. We are very hopeful in 1977 and shortly thereafter that RAMP would be the leading agency helping us.

They developed some local RAMP committees, and those committees in our area were very responsive, helped identify sites, worked with us. I was on one of those committees. We got things going.

RAMP wasn't funded, or funded at a very low level. What has happened is the State is supposed to do the job. The State is not doing the job.

We have problems. As a local official, I would much prefer the RAMP delivery system in our community.

I want to thank you very much.

The CHAIRMAN. Thank you. Well, I am delighted to have you here, because you are good people who are seriously involved with one of the programs that I was proud to help put in this surface mining legislation.

The whole idea of going back and curing the sins of our fathers, the previous generation, the whole idea of involving local landowners and farmers with the Department of Agriculture, using their expertise, was a good one.

All of this made just a tremendous amount of sense to me, and still does. For the life of me, I cannot understand why we have not been able to get full funding of this RAMP program, if nothing else, to show that we can restore lands, working with the local people, that we can get down to the specifics of the job at a local level.

I certainly applaud your recommendations and your testimony. I hope you will push your Pennsylvania representatives here in the Congress to work with us on full funding for this. It is a good program.

And your area is exactly the kind of place we ought to be utilizing it.

Mr. Lujan.

Mr. LUJAN. Thank you, Mr. Chairman.

I fully agree with you. And those pictures tell the story.

Mr. MANKAMYER. RAMP is the only system that has delivered for us in our area yet. And they have delivered a good record.

Mr. LUJAN. Thank you, Mr. Chairman.

The CHAIRMAN. All right. That concludes our hearing this morning. Thank you all for coming.

[Whereupon, at 12:15 p.m. the subcommittee adjourned subject to the call of the Chair.]

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APPENDIX

FRIDAY, FEBRUARY 22, 1985

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

Opening Statement
CONGRESSMAN JOHN P. SEIBERLING

before the Subcommittee on Energy and the Environment
Hearings on the FY 86 budget
for the Office of Surface Mining (OSM)

As one of the original sponsors of the Surface Mining and Reclamation Act, I continue to maintain a strong interest in the regulatory activities of the OSM and in the OSM budget.

This Committee has heard considerable testimony that there is widespread abuse of the Surface Mining Act. In fact, the Committee has opened a full-scale investigation into this abuse. I am very interested in how the President's budget proposes to solve these problems.

For several years after 1978, almost half of all federal cessation orders issued by OSM (approximately 2,000) were ignored by coal operators who mined coal in the face of federal enforcement orders and left sites unreclaimed. These operators failed to pay some $120 million in penalties. I hope that representatives from OSM will tell us today how the agency is handling this so-called "megabucks" problem.

I also expect to hear what the agency is doing to halt the abuse of the two acre mine sites exemption in Section 528(2) of the Act. Contrary to the clear intent of this Committee to limit the scope of that exemption, many of the largest coal producers have been avoiding the Act's requirements for their contract mines by claiming the two-acre exemption. There are now between 2,500 to 3,000 of these

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mines, few of which are being reclaimed to the Act's standards. Moreover, the abuse of the two-acre exemption has exploded in the past two years, especially in Kentucky and Virginia, despite the assurances of OSM to this Committee that the abuse was dying out.

In addition, I would like for OSM to address a growing problem of the abuse of exploration activities. In the past two years, over 2,800 persons or corporations gave notice of their intent to explore prior to mining. A very large number of these exploration activities were coal mines which have been left unreclaimed. I think that OSM must have adequate resources to deal with this emergency problem.

Of course, as the father of the Abandoned Mine Reclamation Fund, I am very concerned that OSM is not releasing these funds as quickly as it should. OSM should be making every effort to clean up these abandoned mines immediately. I see no point in waiting; the cost of cleanup will only increase as time passes.

Finally, I understand that some problems have arisen concerning OSM's efforts to effectively protect historic and archealogical sites throughout the country. I urge OSM to continue discussions with the proper state officials in Ohio and other states to ensure that sites of historical or archealogical significance are preserved.

In order to address all these problems, OSM must have adequate personnel and resources. I understand that the original budget submission within the Department included a proposal for additional inspectors, but somewhere in the budget process this request was dropped. I think that OSM must examine its priorities, and use its resources wisely. There is much work to be done, and I am afraid that the current budget may not allocate resources properly. I think that this Committee must take a very careful look at OSM's budget request for the upcoming fiscal year.

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Statement of John D. Ward
Director
Office of Surface Mining Reclamation and Enforcement
House Committee on Interior and Insular Affairs
February 22, 1985

Mr. Chairman and distinguished members of the Committee:

It is my pleasure to have the opportunity to discuss the highlights of the Fiscal Year 1986 program for the Office of Surface Mining Reclamation and Enforcement.

The Office of Surface Mining's goals are to protect the environment from adverse effects of surface coal mining and to reclaim lands damaged by past mining operations. The Administration believes that these goals are best accomplished by supporting State programs with responsive technical assistance and constructive evaluation. I strongly support these goals.

The Fiscal Year 1986 budget proposal underscores our continuing priority to maintain and improve State programs. We will meet this priority by providing adequate grant funds and more responsive and targeted technical assistance. At the same time, I will continue to implement efficient and effective management policies and practices to improve our performance.

I have requested and the Department is providing critical support for our management improvement efforts. The Secretary has created an intra-Departmental task force to examine OSM operations and to submit recommendations for management improvements. This task force is staffed by people who have management, systems, and mining expertise. Hence, it will provide an independent but thorough analysis. It will work closely with the Committee, the General Accounting Office, and the Office of Management and Budget.

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In recognition of our previous reorganization, the agency was exempted from the ten percent across-the-board reduction for administrative expenses that is required of other bureaus for 1986. Also, we have created a new Assistant Directorate for Finance and Accounting to provide a focus for various financial management operations that also include grants administration and the collection of civil penalties.

OSM is requesting $330.2 million for Fiscal Year 1986, of which over 75 percent, or $252 million, is earmarked for State regulatory and reclamation grants, and grants to assist small mine operators. These grants support State efforts in regulation and reclamation which are implemented by several thousand State personnel. We are committed to assist State programs, which are the cornerstone of a strong, nationwide effort to meet environmental protection and energy development needs. Despite the Agency's total decrease in new budget authority, programs that provide technical assistance to States will be maintained and improved. In addition, increases are proposed for selected program components. The increases are primarily intended to carry out a complete Federal regulatory program in Tennessee, which has ceded its regulatory authority to OSM, and to enable improvement of systems to assess and collect civil penalties levied pursuant to the Act, consistent with the recent settlement agreement reached between the Justice Department and counsel for plaintiffs in the Parker and Gasch court orders.

The request for the Regulation and Technology appropriation is $79.9 million, an increase of $4.8 million from the 1985 appropriation. A 1985 supplemental appropriation of $4.8 million is also proposed for Federal Regulatory Programs, in order to meet regulatory responsibilities in Tennessee and to improve assessment and collections operations.

The proposal for State Regulatory Program Grants is $38.1 million, an increase of $1.4 million. Twenty-five States will have regulatory primacy in Fiscal Year 1986, assuming that Tennessee regains primacy. Most of the proposed increase will support the Oklahoma and Tennessee primacy programs. At present, OSM has implemented effective regulatory programs in these States

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while working with them to prepare for the resumption of full regulatory status. Cooperative agreement funding will continue to allow participating States to regulate activities on Federal lands. This funding will also assist three Indian Tribes to develop regulatory program skills, anticipating the possibility that Tribes will achieve primacy in Fiscal Year 1987.

The request for Program Operations and Inspection is $22.5 million, an increase of $1.6 million. The increase reflects the difference between savings that result from the completion of activities in Oklahoma and Tennessee and increases for several proposed initiatives. These include an addition to improve systems for assessment and collections. Consistent with the settlement agreement concerning the Parker and Gasch court orders, OSM will augment existing systems so that permit applicants can be matched against those who have unabated violations or unpaid civil penalties. With the enhancement of the data base, OSM and the States will be able to deny permits and bring other legal actions against violators when necessary. Another increase will support legal services related to the regulatory program.

The request for Technical Services and Research is $12.1 million, an increase of $1.5 million. The increase is needed to implement the Federal regulatory program in Tennessee and is primarily related to permitting. It should be noted that, in addition to the new workload generated in 1985 and 1986, OSM must also reprocess permit applications that were incorrectly processed under the former State program. To date, over 200 existing permits need this type of attention.

Programs within both the Program Operations and Inspection and Technical Services and Research subactivities that provide technical assistance to States will be maintained and improved in 1986. Our training programs will target needs that are identified through State program evaluations and in consultation with the States. Training will be implemented both through Headquarters and a special assistance component located at the Western Technical Center in Denver. Training will be designed not only to correct problems, but to provide the updated information critical to improve program management.

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The General Administration request is divided between OSM's two appropriations. The total request is $11.7 million, an increase of $0.6 million. This amount will enable OSM to maintain current administrative services.

The request for the Abandoned Mine Reclamation Fund appropriation is $250.3 million, a decrease of $46.6 million from 1985.

State Reclamation Program Grants are budgeted at $211.2 million, a decrease of $46.5 million. The decrease reflects the need to conserve available AML Fund resources and thereby maintain the Fund's long-term ability to support State programs. Recent appropriations have far exceeded the Fund's receipts and sharply reduced its unappropriated balance. This proposed decrease will better align financing to assure States of effective future levels of support. Continued increases in grants would soon create a serious cash flow problem, leading to the dependence on unknown future collections as well as past years receipts. Consequently, OSM would have to submit greatly reduced appropriations requests; grants might drop to well below $200 million. Such an abrupt decline would disrupt State program management and endanger the continued existence of some State reclamation programs. The proposed request for 1986 will ensure a more orderly program structure by conserving available funds and making grants available at levels that realistically approximate the States' proven capabilities to obligate funds. States would then be able to plan their programs with confidence for the life of the Fund.

The request for Reclamation Fund Management is $6.8 million, an increase of $0.2 million. The increase will allow OSM to contract for audits in order to verify that mine operators have paid reclamation fees consistent with the Act. OSM will also continue to operate the National AML Inventory. OSM's proposed apportionment policy, based on the Inventory, was sent to the States for comment last year. Comments have been received and an apportionment system is expected to be established this Spring.

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Federal Reclamation Projects are budgeted at $21.4 million, an increase of $3 million. This increase is slated for projects on Tribal lands and in non-program States. In the past, the funding level has only allowed OSM to address a small percentage of priority 1 and 2 projects. With the increase, OSM looks forward to addressing an increased number of previously-identified abandoned mine land problems on Tribal lands.

The Rural Abandoned Mine Program (RAMP) is proposed to be funded at $3.4 million, a decrease of $6.4 million. This decrease is consistent with the Administration's policy to rely on State reclamation grants as the primary delivery mechanism for RAMP-type projects. The requested funding level is sufficient to meet existing project commitments.

For the first time since 1981, funds are requested for Small Operator Assistance Payments (SOAP), at a level of $3.1 million. SOAP provides for small mining operators to pay for certain costs associated with obtaining hydrologic and geologic information needed to prepare coal mining permit applications. Appropriations are requested because available prior-year funds, which have supported SOAP for several years, will be largely exhausted by 1986.

I believe that our programs are, in general, functioning well. Our 1986 proposal, by maintaining financial and technical support for State programs and improving the efficiency and effectiveness of the Federal effort, will ensure that they continue to do so.

I thank you, Mr. Chairman, and the members of the Committee for allowing me to present our program.

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First AMENDMENT TO AGREEMENT

United States
Department of the Interior
Office of Surface Mining
Reclamation and Enforcement

State/Tribe: Kentucky
Designated Agency: Natural Resources and Environmental Protection Cabinet
Grant No.: G5143213

The United States of America, acting through the Director of the Office of Surface Mining Reclamation and Enforcement (OSM) or his delegate, and the State named above, acting through its designated agency mutually agree, pursuant to the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, U.S.C. 1201 et seq. to amend the above referenced grant agreement, dated February 7, 1984.

The following sets forth conditions to the Fiscal Year 1984 Administration and Enforcement Grant. Continued funding of the State's regulatory program is contingent upon the agreement to and the completion of, in its entirety, the requirements outlined below. Failure to meet the terms of this agreement may result in the immediate suspension of Kentucky's letter of credit until such actions are rectified. Specific terms of this agreement are listed below:

I. Extension and Funding

A. Extend grant period from December 31, 1984 to June 30, 1985.

B. Increase the Federal share from $7,650,365.00 to $10,959,535.00 (increase of $3,309,170.00). Increase total amount from $15,300,730.00 to $21,919,070.00 (increase of $6,618,340.00).

II. Regulation of the Two-Acre Exemption Requirements

A. The State shall centralize the issuance of two-acre permits in the Frankfort Office no later than January 15, 1985.

B. The State shall develop and implement by January 25, 1985, procedures for the review of relatedness and public roads on each permit application which are sufficient to eliminate past permitting problems in these areas. This further includes completing by January 18, 1985, the updating of the Prime Computer Data Base to facilitate a relatedness review of all permits including the permits previously issued.

C. The State will implement by January 25, 1985, a review of the existing 1500 two-acre permits and conduct at least one (1) on-site inspection of each site. This study shall consist of two phases. Phase I shall include the review of approximately 850 permits issued during calendar year 1984, concluding on or about March 31, 1985, with a formal report summarizing the State's actions due to OSM by April 30, 1985. Phase II shall consist of two-acre permits issued prior to 1984 (approximately 650) with completion scheduled on or about July 1, 1985, and a final report due July 30, 1985.

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D. The State will cite all violations observed through the appropriate statute and regulations. Operators determined to have exceeded the two-acre threshold shall receive a notice of noncompliance requiring that all mining activities, including coal removal, be ceased immediately and that the operator obtain a permanent program permit or reclaim the entire disturbed area to permanent program standards. Should the operator fail to cease all mining activities, an order of cessation will be issued the following day. All enforcement actions taken by the State shall be reviewed for alternative enforcement actions and patterns of violations.

E. The State will provide, by Regional Office, copies of all inspection reports, enforcement actions and summary reports of the State's findings. Further, the State will provide, before January 25, 1985, a listing of all two-acre permits issued during 1984, prioritized in order of the State's scheduled review.

F. The State will provide, beginning April 1, 1985, and continuing on a monthly basis, a list of currently issued two-acre permits. In addition, the State will provide monthly, a report by Regional Office, the number of on-site inspections completed on two-acre permits and the number/type enforcement actions taken.

G. The State will provide convenient access to working documents, as requested by OSM, for use in OSM's oversight evaluation of the two-acre study.

III. Attainment of Approved Staffing Levels

CEB JDW

A. The State shall meet and maintain, by Aug. 31, 1985, the approved staffing level of 488 personnel in DSMRE and 17 personnel in the bond forfeiture section of the AML program.

B. The State shall provide to OSM, by the fifth of each month, beginning on February 5, 1985, a report describing the actions taken to achieve the approved staffing levels as well as any additional vacancies which may have occurred during the month.

C. The State must complete advertisement and other recruitment actions for necessary positions to meet approved levels by ~~April~~ MAY 1, 1985.

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CEB

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This amendment takes effect at the time of signing by the Director, OSM, or his authorized delegate and applies to the entire grant period unless otherwise stated above. In all other respects, the agreement of which this is am amendment shall remain in full force and effect.

THE UNITED STATES OF AMERICA

by: John D. Ward
(Signature)

John D. Ward
(Name)

Director
(Title)

Office of Surface Mining Reclamation and Enforcement
United States Department of the Interior

Date: February 21, 1985

State: KENTUCKY

by: Charlotte E. Baldwin
(Signature)

Charlotte E. Baldwin
(Name)

Secretary
(Title)

Natural Resources and Environmental Protection Cabinet

Date: February 21, 1985

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Statement of

TIM GALLAGHER

CHAIRMAN, WESTERN INTERSTATE ENERGY BOARD

and

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

on

FY'86 BUDGET FOR THE OFFICE OF SURFACE MINING

before

SUBCOMMITTEE ON ENERGY AND ENVIRONMENT
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

February 22, 1985

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Good morning, I am Tim Gallagher, Chairman of the Western Interstate Energy Board, and the Assistant Administrator, Energy Division, Montana Department of Natural Resources and Conservation.

I am here this morning to provide some collective views of the Western States on the proposed FY '86 Budget and Program for the Office of Surface Mining. The State of Montana and my colleagues from Utah and Colorado and letters from Wyoming and North Dakota attached to my testimony will further document these shared views.

Mine Plan Reviews

Over the past four years, and these are years of having all of the State Regulatory Programs approved, the increase in the OSM regulatory presence has far outstripped the increase in OSM's support to the States for their primary regulatory programs. Grants to the States for the period, FY'83 to FY'86, have increased from $32.15 million to a requested $38.10 million in the coming Fiscal Year. This is a 19% increase in direct funding assistance to the States.

On the other hand, the level of the Federal Regulatory presence during the same period tells a far different story. In FY'83, the cost of the Federal Regulatory Program (this includes the I&E and Technical Centers) was $21.4 million. In FY'86 this same presence is estimated to cost $34.61 million, or a 62% increase. Similarly, the increase in the number of Federal employees (FTE) for this function during this same period is from 375 to 561, or a 50% increase.

In 1984, OSM successfully sought a $2.7 million supplemental to the regulatory function for the increased review and approval of mine plans in the western states. These funds were included in the budget base for FY'84 as shown in the submission of their request for FY'86. No reductions in this function have been carried forward. Yet during this same period, including previous and subsequent years, OSM initiated a policy for funding cooperative agreements with the Western States that has proved to be detrimental to some of our programs. It is a policy designed to decrease support to the States and to assure a continuing role for OSM in the review and approval of mine plans involving Federal lands. This has resulted in the funding for Cooperative Agreements remaining nearly static over this 4 year period:

FY'83 = $5.400 million	FY'85 = $4.761 million
FY'84 = $5.525 million	FY'86 = $5.269 million

This represents a decrease in the level of support for State Regulatory Activities since more States and Indian Tribes are now included in such agreements than was the case in FY'83. Further, increases in State employee salaries and costs of equipment have

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been absorbed in this near constant support. In short, this budget contains a dramatic increase in the Federal regulatory presence in our states relative to the near constant level of support given to our State programs.

The new and expanded Federal Regulatory presence is specifically justified on the basis of mine plan workload factors that are quite disturbing, and I quote:

"In addition, OSM will resume primary responsibility for reviewing operational and reclamation plan portions of mining plans. In the past, OSM had encouraged States to conduct these reviews through cooperative agreements." (pg 52)

"Section 511(c) requires a mid-term permit review in order to allow statuatory reviews of mines repermitted in Fiscal Years 1983 and 1984. These mines received five-year permits that must be reviewed midway during the permitting period..... The mid-term permit review determines whether permits will require revisions or modifications during the permit term. Revisions and modifications must be based on written findings and are subject to notice and hearing requirements of the permit program." (pg.53).

Taken together, these statistics indicate a steady growth in the Federal presence within a function that States are to perform under their primacy and cooperative agreements.

In the west, most mines contain both Federal and non-Federal lands in such proportions and distributions that the entire mine operation must be reviewed in its entirety, not partitioned on the basis of land ownership.

These workload justifications have substantial implications for duplicatory regulatory activities by OSM as well as for cooperative agreement grants to States.

We are concerned when OSM continues to maintain that it must independently review mining and reclamation plans for NEPA purposes and Secretarial approval.

We take strong exception to that position.

States can work within the NEPA framework and in the case of Montana be the lead agency for NEPA.

States with approved regulatory programs can be the lead agency on mine plan review with OSM staff as part of that review team.

We see this as a matter of <u>trust</u>. Trust that the States are also capable of regulating surface mining activities. This is evidenced by broad based support from the environmental, ranching, and industry communities.

I invite those within the Department of Interior who lack the trust in our State program to do the job, to come to Montana

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and work with us and then determine where the regulatory capabilities lie.

With respect to the budget, I would not grant the cumulative increases in the mine plan review function, (those of the supplemental last year and that requested this year). Maintenance of mine plan review at the 1983 level would save approximately $3 million.

Also, the uncertainty surrounding funding of the Cooperative Agreements is rekindled by the OSM review of operational and reclamation portions of mine plans and the mid-term review.

Three years ago, OSM created two sets of environmental standards for funding under the cooperative agreements. OSM deleted funding for review of mining plans on Federal Lands from State cooperative Agreement Funds. This did not make sense at the time, or does it now. Mine plans cannot be partitioned by either land ownership or environmental standards for review. Water, wildlife, plants or topographic stability do not depend on boundaries of ownership.

If the current policy of cooperative agreement funding holds for these two new intrusions by OSM, then damage to the State-Federal cooperative relationship may result.

Such an eventuality may result in some states reassessing their role within the cooperative agreement framework.

These numbers, funding for State Programs and that for the Federal Regulatory presence, taken together with the program work elements outlined in the budget, represent a Federalization of the Surface Mining Regulatory Process. The basic intent of the Act calls for State primacy in the regulatory arena.

OSM's efforts should be re-directed to supplementing the approved State Regulatory Programs, not staking out the regulatory functions that it insists on undertaking in order to assure a continued and major regulatory presence.

Cost Recovery-Permit Fees

Last November, a General Accounting Office Report on the recovery of costs for mine plan and permit review and inspection and enforcement activities was released by the House Government Operations Committee.

There was substantial adverse comment from the States on this proposal.

Attached to my testimony are the comments from the Western States which were provided by Governor Herschler on behalf of his colleagues.

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While cost recovery for permitting and inspection activities are not included in the FY'86 budget proposal, I understand that such a recovery system for Federal costs and on Federal lands can be implemented at any time.

We think that such an approach is misdirected.

The benefits to society resulting from the protection of the environment from surface mining impacts are widespead and extend beyond the life of the mining operation. The legislative history of the Federal Act clearly demonstrates this point. Thus the costs of the regulatory program should be borne by society at large and not specific fees on operators.

In order to put this matter at rest, we urge you to direct OSM in your Committee report not to impose such a cost recovery fee on mining operations.

The Good News

Some initiatives have been started by the new Director that we view in a very positive light. We hope that these move forward quickly.

Regional Advisory Groups

Director Ward has discussed with the States establishing regional advisory groups. Such groups would be comprised of the multiple interests involved in the regulation of coal mines: the states, mining industry, and environmental and ranching community. The groups would be organized around the larger mining regions and would serve as a forum for the discussion and resolution of the larger issues affecting the implementation of the Federal program on more than just a state by state basis.

We see this effort as a positive step in making sense of a national program on a regional basis. This allows the program to be shaped to regional needs while meeting the national objectives of the Surface Mining Act.

It also moves the focus of resolving program issues out of Washington and into the areas of mining and primary regulation.

We look forward to having the Western Advisory Groups established within the next two months and will work with OSM to achieve this goal.

Decentralization of Decision Making

One of the major problems with the current implementation of the Surface Mining Act is the flow of final decisionmaking to Washington.

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While this may have been necessary in the early stages of the program when States did not have approved regulatory and abandoned mine lands programs and OSM was mandated to inspect mines during the interim program, conditions are substantially different now.

Virtually all states in which there is significant coal mining have approved regulatory programs. These States have primacy in regulation.

All states with appproved regulatory coal programs also have approved abandoned mine land reclamation programs.

These two conditions dictate that many final program decisions by OSM should be moved to the loci of state primacy and not be returned to Washington.

For example, implementation of oversight policy should be tailored to the specifics and conditions of the individual state regulatory programs. Approaches to oversight should reflect the substantial differences in the geography and structure of the industry which are evidenced among the States.

Resolution of differences concerning inspection frequency and types belong in the arena of the particular characteristics of the mining area. Under some conditions, critical times for inspection should be keyed to natural events such as magnitude of snow melt run-off, major storm frequency or the like. These local and regional differences are best determined in the field, not in Washington.

The western states encourage and strongly support the decentralization of as many decisions and functions as possible.

Support for such an effort goes beyond the States. Local and regional citizen groups will have a greater voice within the program if decisions are final within their direct sphere of influence. Mine operators will also benefit from field decisions by having the exercise of regulatory powers more closely match their operations responsibility. In many instances, a particular mine will be able to meet specific requirements and conditions of regulatory decisions. However, if the regulatory issue and the company response is elevated to a national level, the flexibility of response is often constrained by other factors.

Decentralization should result in more effective program performance by OSM and subsequent budget proposals should reflect the efficiencies gained.

Alternative Program Measures

Last year several of the representatives from the western states stressed the need for OSM to evaluate the effectiveness of the regulatory programs, not just the program itself. This is

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the difference between looking for on-the-ground measures of success versus counting the numbers of inspections and other procedural paraphenalia.

Congress supported this concept.

Yet, it is not clear that progress has been made on this initiative. I understand that it may be difficult to translate such a concept into agency action, especially during a year of transition in program leadership.

However, the need for adjusting the basis for evaluation of the State regulatory programs is still evident and more pressing than ever.

Director Ward wants to have the Regional Advisory Groups address the development of alternative measures of program effectiveness as one of their first tasks.

We agree that such measures should be developed on a regional or perhaps sub-regional basis.

We hope there are sufficient resources within the budget for OSM to make a substantial committment to this effort.

Since the detailed budget justification did not address either the advisory groups or efforts to develop these program measures, we recommend that OSM be asked to identify the resources that will be made available for these purposes, and then augment them as necessary. Highlighting these efforts in your report on the program's budget as high priority items for agency performance in the coming year would be supported by Western States.

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Statement of

Dianne R. Nielson
Director
Division of Oil, Gas and Mining
Department of Natural Resources
State of Utah

on

Program Performance
of the Office of Surface Mining (OSM)
as Relates to Proposed FY 86 Budget
Justifications and Responsibilities
Under the Surface Mine Control and Reclamation Act
of 1977 (PL 95-87)

before the

Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
U. S. House of Representatives
Washington, D. C.

February 22, 1985

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OSM - STATE COORDINATION

The Office of Surface Mining (OSM), through its new Director, John Ward, has made significant progress in effective coordination with the state programs and recognition of the fact that while there is only one Surface Mine Control and Reclamation Act, there are twenty-five (25) state programs which regulate surface coal mining and the surface effects of underground coal mining. We have seen positive recognition and support for state program needs through:

1. Institution of Regional Advisory Committees comprised of representatives of state programs, regional environmental groups, and industry;

2. Commitment to append state comments to OSM oversight reports to Congress;

3. Request for and commitment to strengthen technical training and assistance regarding specific program needs;

4. Active, open dialogue between OSM leadership, the state program representatives, industry, other interests;

5. Striving for a federal-state regulatory partnership which enables both OSM and the states to fulfill their program responsibilities.

We see these changes as improving program effectiveness and efficiency. Equally important, they mark a new path of communication and cooperation between the state regulatory programs and OSM.

Despite these improvements, portions of the OSM FY 86 Budget Justifications counter these very changes. We request that this Committee consider and act upon the following program problems, which will otherwise result in duplication of efforts and hence, unnecessary expenditures of federal funds.

DECENTRALIZATION

The states have long supported the need for effective coordination at the OSM Field Office level. OSM espouses this philosophy, as stated in their FY 86 Budget Justifications (page OSM-30, paragraph 1), when, in fact, OSM's Washington, D.C. staff has continued to dictate operations. The Budget Justifications (page OSM-60) fail to support or acknowledge the need to delegate responsibility and commensurate funding to the Field Offices for the purpose of direct coordination of state program and OSM objectives.

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Furthermore, the state currently deals with OSM's Field Office and Western Tech Center independently. There is no single point of state focus and communication. Page OSM-30 of the Budget Justifications lists activities which the state coordinates with the Albuquerque Field Office. None of the programs coordinated through the Denver Tech Center were mentioned.

MINE PLAN REVIEWS

Mine plan reviews, consisting of technical adequacy reviews and determinations, have been performed by the states in accordance with state programs, which are by definition "as effective as" the federal program. As referenced in a number of areas in the FY 86 Budget (pages OSM-20, OSM-52, and OSM-53), OSM is now indicating that they will review operations and reclamation mine plans on federal lands. If this new "review" is to be a review of documents prepared by the state, it is contrary to the notion of primacy and the federal-state partnership. The "review" could be handled more efficiently and effectively through oversight. If the "review" is to be the preparation and determination of findings, based on the operator's permanent program permit application, then it is a review in violation of SMCRA, state primacy, and the cooperative agreements issued under SMCRA. It is also an ineffective, expensive duplication of state program responsibilities.

Utah, because it has operated under a Funding Cooperative Agreement, is in a unique position to evaluate the effectiveness of federal "review" of mine plans. OSM took the lead role in reviewing eight (8) repermit applications on federal lands in Utah. Specific problems encountered with the "reviews" are worth noting:

1. OSM's Western Tech Center undertook responsibility for those review with the intent of expediting the process where the state was assumed to be "dragging it's feet". Eighteen (18) months later, it is clear that OSM has encountered the same problems in meeting deadlines. OSM has continued to miss deadlines and slip schedules. OSM has been no more effective than the state in reducing specific mine plan review periods.

2. The permits must be reviewed, findings made, legal adequacy confirmed, stipulations issued, permit approved, and permit enforced in accordance with the state program. This is not the same as federal "interpretation of intent" of the state program. Significant legal and technical problems arise when those interpretations replace legal and technical findings by state program personnel. We must enforce on state law and regulations, and not be second guessed by federal interpretation of our law.

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3. Coordination of permitting and inspection/enforcement actions are the responsibility of the state programs. If OSM assumes permit review responsibilities that coordination becomes twice as difficult. Notice of violation (NOV) and cessation order (CO) abatements must be coordinated with two (2) permitting entities, the state and OSM. The result is that the procedure of "permit revision by NOV" occurs, rather than permit revision based on consistent, well planned changes in mine plan or operational requirements.

4. In Utah's case, the state has determined that some OSM permit findings do not meet the requirements of the state program. The state must then request that findings be better documented or that stipulations be attached to the permit, prior to state approval. Had the state conducted the review initially, many problems could have been handled with less duplication of effort and money.

OSM has more effective, less costly mechanisms for insuring adequate permitting actions on federal lands. They include:

1. Technical assistance in support of state program needs;

2. Careful review of state programs to insure that they provide regulation "as effective as" federal regulation;

3. Oversight reviews designed to measure program effectiveness, not statistical tabulation of numbers;

4. Coordination and consultation between state and federal attorneys to provide better understanding and defense of federal and state programs.

OVERSIGHT

OSM needs to review the objectives of oversight and insure that the oversight work plan meets those needs. The 1985 work plan offers the potential for program review rather than "bean counting". This is a significant improvement. However, the work plan, while apparently designed to measure on-ground compliance, represents a confusion and duplication of permitting and inspection/enforcement responsibilites. For example, inspections to check "operational compliance" are clearly the responsibility of the inspection/enforcement program and the Albuquerque Field Office. Yet the inspections are to be conducted by the Western Tech Center. The role of the Tech Center should be one of research and technical program assistance. There also needs to be a clear understanding that the standard of performance is the state program, law, and

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regulations. SMCRA and OSM regulations are not the standard for any state with primacy. This is a conceptual problem, not only in oversight, but in the Budget Justifications for FY 86 as well. OSM references to the concept of state responsibilities, in accordance with OSM standards (pages OSM-1, OSM-2, OSM-27, and OSM-28) is incongruous.

AML PROGRAM FUNDS

OSM, through the FY 86 Budget Justifications, is attempting to set a dangerous precedence in the reallocation of AML funds. The fees paid to the AML account were designated in SMCRA for reclamation of abandoned coal and non-coal mines. OSM, on page OSM-2, is proposing to fund a pay supplemental for operations and research from the AML appropriation. Such an expenditure is clearly outside the scope of Sec. 401(9) of PL 95-87. There has been considerable testimony from states supporting the predicted shortfall in AML funds needed to meet reclamation requirements through the life of the AML Program. This diversion of funds only compounds that problem.

OSM has incurred additional financial burdens in the Tennessee Program, because it failed in its original management charge. To cover this failure through an unprecedented and unjustified allocation of reclamation funds, only compounds AML funding problems and whitewashes OSM Title V performance problems.

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TESTIMONY FOR THE HOUSE INTERIOR AUTHORIZATION COMMITTEE
HAMLET J. BARRY III
COLORADO DEPARTMENT OF NATURAL RESOURCES
FEBRUARY 22, 1985

Good morning Mr. Chairman and members of the committee. I am here today on behalf of Governor Lamm to discuss a number of issues of concern to Colorado with respect to the Office of Surface Mining's (OSM) FY'86 budget request. Last year I testified before this committee about Colorado's concerns with overall budget levels proposed by OSM and the rationale presented by OSM for these budget levels. This year I would like to follow-up on that testimony and report on the events of the last year relative to budget issues, and make some recommendations for the FY'86 OSM budget. I will address both the Title IV and Title V programs, beginning with the Title IV program.

TITLE IV ISSUES

Colorado's AML Program has made good progress in meeting it's reclamation objectives with respect to the hazards and environmental problems related to past coal mining. However, there remains the very intractable problem of mine subsidence in highly developed areas. We have been working diligently over the past year and a half to develop a subsidence insurance program which will address this problem. We were very pleased and encouraged to see the authorization for using the Reclamation Fund to establish subsidence insurance programs, emerge during the FY'85 continuing resolution process.

One of our great assets, from the standpoint of understanding and describing the subsidence problem in Colorado, is the substantially complete set of underground mining maps available from our Division of Mines. Such maps have been required of mine operators by the Chief Coal Mine Inspector since 1888. As a result we have been able to locate most of the undermined areas which have subsequently been developed in Colorado.

It is unfortunate that the availability of this information is not advantageous from an insurance point of view. In Colorado, there is no legitimate way to spread the risk for mine subsidence to a population not entirely exposed to the hazard. Other states with less complete mine map repositories can do this legitimately. Colorado is attempting to develop an insurance program with an extremely adverse selection of participants to be

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insured. Also, there are a number of constraints which apply to the establishment of public sector insurance pools in Colorado.

Our concern is that OSM is developing regulations for subsidence insurance which narrowly interpret the Congressional intent of the Continuing Resolution. For example, OSM seems to think that an insurance program can operate exactly like the AML program, with simple drawdowns off a letter of credit for all expenditures. In Colorado, a Public Sector Pool must be established with an initial capitalization or rese rve fund. This minimum reserve against "expected losses" is considered "obligated" by the Commissioner of Insurance. The initial reserve must be administered by the executive of the insurance pool in accordance with the pool bylaws. Also, the Pool must have an operating balance to cover routine administrative expenses and to pay reinsurance premiums. A subsidence insurance program must function efficiently, like any insurance business. The checkbook type accounting or pay as you go system envisioned by OSM is not efficient or consistent with common insurance practices.

There is nothing in the language of the Continuing Resolution which should preclude Colorado from the "establishment of a self-sustaining state administered program to insure private property against damages caused by subsidence" as long as these terms are understood properly in the context of an insurance program. Within the next several months our subsidence insurance program development project will be completed. At that point we will be in a position to request funding from OSM and to seek authorization for the program from the Commissioner of Insurance. We would like to share our program proposal with you Mr. Chairman, and Members of the Committee when it is complete. We hope you will find that our program meets the intent of the Congressional Authorization in a direct and creative fashion.

TITLE V ISSUES

Colorado assumed primacy for its coal regulatory program on December 15, 1980. A very competent mining and reclamation staff has been developed to undertake the permitting, inspection and enforcement responsibilities.

Budget Levels

On page OSM-23 of the United States Department of the Interior Budget Justification, F.Y. 1986, OSM estimates the FY'86 budget for the Colorado state program on non-federal lands to be $422,000. OSM's estimated program grant for the Colorado state program is $198,000, less than the 50% cost share

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authorized in Section 705(a) of the Surface Mining Control and Reclamation Act (SMCRA). Colorado submitted a state program budget estimate to OSM on June 5, 1985 for $462,673. The proposed OSM budget of $396,000 (2 X $198,000) for the Colorado state program is approximately 14% less than our June, 1985 estimate. This reduction comes at a time when OSM is requesting Colorado to increase its staff levels and budget. Therefore, we recommend that OSM be directed to budget the full amount to Colorado that we estimated in June, 1985, and, particularly, to budget $231,337, the 50% federal share, for the Colorado state program grant.

Technical Services

I continue to recommend that OSM give greater emphasis in the budget to technical research and assistance. Good work has been done in this area and I would like to ask this committee to encourage OSM to expand its efforts. For example, a cooperative research effort has been undertaken by the state and the western offices of the United States Geological Survey, the Bureau of Land Management and OSM to assess the impacts of mining upon surface and ground water hydrology. The research is specific to the region and enables us to better understand mining impacts and how to mitigate the impacts. There is a need to expand this type of cooperative research and therefore we recommend that $150,000 of the $971,000 earmarked for research be made available for these cooperative projects.

OSM Program Operations and Inspection

In my testimony last year I emphasized a concern that as the oversight program grew, it was was becoming excessively bureaucratic, and that the oversight policy needed to be reoriented toward assessing program effectiveness. At that time it was apparent that OSM was evaluating the paper shuffling process and not evaluating the on-the-ground performance of the mining community under the state program. I expressed concern that there were a number of hidden oversight functions in the budget, under the guise of technical assistance, which further contributed to the oversight bureaucracy. I recommended that the OSM budget for oversight activity be cut 50%, and that the funds be reverted or spent on real technical assistance to the states.

I would like to reassert this concern and recommendation this year. I am concerned that the centralized oversight bureaucracy continues to grow to the detriment of the state and federal programs. I want to recommend that OSM be

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decentralized as a partial cure for this problem. Further, alternative measures that could be used to evaluate program effectiveness on-the-ground have not yet been developed by OSM, however, I have some specific suggestions as to what types of measures could be developed. I will now address these points more specifically.

OVERSIGHT -

Last year I expressed concern about the increase in the oversight effort and the burden it placed upon the states to keep up with the "paper shuffle". I regret to report that the oversight paper shuffling process has continued to grow, and in fact, it is difficult even for OSM to keep up with it. For example, the 1984 outline and format for the annual oversight evaluation report was 47 pages thick. The 1985 outline and format for the 1985 oversight evaluation reports is currently 73 pages thick, 26 pages thicker that last year. I find it ironic that last year I recommended a 50% cut in the oversight budget, and instead I may have witnessed a 50% growth in the oversight process! As these documents becomes thicker, the requirements for state data increases. Yet it is clear that much of the data has little substantive meaning. Of particular note, none of the data collected and analyzed in the oversight report directly assesses the quality of the environment as it is affected by mining and reclamation.

PROGRAM OPERATIONS -

As the oversight program has grown, OSM has become less able to do its job. For example, Colorado's 1984 oversight report was scheduled to be completed in April, 1984, but it was not finished until August, 1984.

The inability to respond in a timely manner on oversight activity has affected OSM's ability to respond in other program areas, also. In some cases, work that is suppose to be done by field offices is being sent to the Washington D.C. headquarters and delayed there. For example, field offices are suppose to review requests for program amendments. A relatively simple program amendment was submitted by Colorado on August 28, 1984 to the OSM field office. It was not reviewed by the field office staff because of lack of manpower and time, and was sent to the Washington, D.C. OSM Headquarters Office for review. We received the response to the amendment from the Headquarters Office on February 11, 1985. No discussion with the Headquarters Office about the amendment occurred during the five months of review, and when we received the response it was evident that the reviewers did not understand the regional context from which the proposed amendments developed.

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DECENTRALIZATION -

Problems such as these prompt me to ask this committee to instruct OSM to decentralize some operations. We suggest that a Deputy Director's office be established in the West and one or more in the East. These offices should be given specific budgets and be directly accountable to the Director. Decentralization should provide adequate staffing of field offices so they can exercise their responsibilities and authority, and it should provide for the development of professionals in the region who understand its characteristics.

Our recent discussions with Director Ward on the idea of decentralization and increasing regional sensitivity give us some cause for optimism. We understand that regional advisory groups will be appointed as one means of addressing this issue. I believe such steps will increase the sensitivity and responsiveness of OSM to the states, the mining and environmental communities, the public and Congress.

ALTERNATIVE MEASURES OF PROGRAM PERFORMANCE -

It is our belief that the fundamental purpose of SMCRA is to ensure performance on-the-ground that protects the environment and reclaims the land. I am disappointed that little has been done by OSM to develop alternative measures of program performance. On the other hand, recent discussions with Director Ward lead us to believe that OSM is receptive to the concept, and that progress can be made in the future. With this in mind, I want to suggest several alternative measures of program performance that OSM could use in the oversight evaluation. They include: 1) Measures that assess hydrologic conditions in mining regions as evidenced by the collection and analysis of hydrologic data; 2) measures that assess the quality and compatibility of vegetation on reclaimed areas relative to the post mining land use; 3) measures that assess wildlife populations as effected by mining and reclamation activity; 4) measure that assess the post mining contours of the land relative to long term stability and compatability with the proposed land use; 5) an assessment of the contemporaneousness of reclamation at disturbed sites, as evidenced by visual inspection and review of mining plans and inspection reports; and 6) measures that would assess the effects of mining and reclamation upon the human environment. There are many more measures that also can be developed.

We recommend that the committee direct OSM to work with the states on the development of alternative measures, to use the measures in the development of the oversight evaluation reports, and to report progress to the committee on these directives.

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Extraordinary Oversight in Colorado

After Colorado and other states raised concerns about the oversight process to the committee last year, Colorado was then subjected to an intense field oversight effort by OSM. The OSM oversight inspection frequency in Colorado was increased eight to ten times the normal level. Individual mines in Colorado were inspected several times during a four-month period by OSM inspectors. This caused considerable hardship for the state agency and caused confusion and consternation among the coal operators in the state. Coal operators wondered whether state primacy was worthwhile if they were to be subject to excessive inspections by both OSM and state inspectors. However, our understanding from discussions with OSM officials is that no significant problems were identified in Colorado and that the other problems have been appropriately addressed by the state. We hope that no extraordinary oversight program will be required in Colorado in 1985.

I want to thank this committee for giving me the opportunity to testify on these matter today. I am confident that we can work together with OSM, the mining and environmental communities, the public and Congress to improve the both the Title IV and Title V programs and make them work.

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THE STATE OF WYOMING

ED HERSCHLER
GOVERNOR

Department of Environmental Quality

LAND QUALITY DIVISION

HERSCHLER BLDG. - THIRD FLOOR
122 WEST 25TH

TELEPHONE 307-777-7756

CHEYENNE, WYOMING 82002

February 20, 1985

Mr. Tim Gallagher
Office of the Governor
State Capital
Helena, Montana 59620

Re: FY 86 Budget, Department of the Interior, OSM

Dear Mr. Gallagher:

I have reviewed the Department of the Interior's Budget Justification, F.Y. 1986, for the Office of Surface Mining and several policy issues arise with respect to the proposed budget. I understand that you will testify before the House Interior Committee on February 22, 1985. With our Legislature in session, I am unable to attend the hearing, however, I wish that you submit these comments for the record. I understand that you and others of the Western States will testify on many important issues including cost recovery through permit fees and decentralization of OSM. Following are several additional concerns I perceive after a review of the F.Y. 86 budget proposal:

Re: Funding of State Regulatory Programs: See pages OSM-18 through OSM-25.

The general text of the financial section of this budget is correct, however, the figures given for the Wyoming Cooperative Agreement were not correct. Table 4 of page OSM-25 indicates the F.Y. 1986 estimated Cooperative Agreement Program level of $1,170,000.00. Wyoming believes this should be approximately $1,450,000.00 in order for OSM to meet the commitment of supporting the federal lands regulatory costs at a level which would have been expended by the Secretary of Interior in the absence of the State. It should be noted that the F.Y. 1985 program level shown on Table 4 is below the $1,318,565.00 approved under the Cooperative Agreement for F.Y. 85. I encourage Congress' active support for full funding of cooperative agreements. This will secure the strength of the State's involvement in the regulatory program on federal lands.

Re: Federal Regulatory Programs - Technical Services and Research: Seepages OSM-43 through OSM-59.

The budget requests increase in funding and staff for Mine Plan Review/NEPA Compliance for permanent regulating programs on Federal and Indian lands. Although the budget implies that this increase is principally for support of permitting activities in Tennessee, where a Federal program will be in place, many policy issues are raised from the justification. The narrative found in

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pages 51 through 53 implies that OSM while fulfilling a lead federal role on federal lands is principally responsible for the comprehensive review of permit documents, and preparation of decision and NEPA Compliance documents. This occurs even for those states where a cooperative agreement exist. Contrary to the Department's statements on page 20, this type of role would be is duplicative of work funded by OSM under cooperative agreements. In the Western Federal Lands States, the bulk of the detailed mine plan review, the preparation of the findings and supporting document and environmental analysis is prepared by the State. Therefore, the workload that is illustrated to fall squarely upon the shoulders of the Technical Centers is deceptive. The Western States have traditionally played a very active role in mine plan view and analysis on federal mines and I am concerned that the recent Flannery Decision on the new federal lands rules and this budget justification may begin to constitute a gradual take-over of this traditional role. In the spirit of SMCRA, we continue to allege that States are in a better position to review mine permit documents, judge local environmental and social impacts and do the job more efficiently. I encourage the committee's continued support of State involvement in coal management decisions on federal lands.

Re: Abandoned Mine Reclamation Fund - State Reclamation Program Grants:See pages OSM-78 through OSM-80.

The Department's budget recommends a large reduction in the funding level to State's to conduct abandoned mine land work. The justification for this reduction is vaguely limited to points like "long-term stability of the program" and "expected reduced levels of funding". State's programs have progressively grown under the direction of OSM and are now beginning to mature. OSM has now, for some reason, decided to cut back this growth in an attempt to stabilize it, therefore, stretching out the funding period. In Wyoming, we have been conducting program planning to consume the backlog of State share fees as soon as practical and thereafter level off to an annual appropriation that equals collections.

We have been driven to this approach by the simple economic principal that the dollar today will move more dirt than it will in a year or two from now. As an example, we are presently getting dirt moved for as low as 50¢ per yard. As we move out of the present economic slump we will once again realize prices at $1.25 per yard and greater. A secondary benefit that we realize today in Wyoming is the creation of employment which is stimulating for a region of the country that is still experiencing depressed economic conditions.

Therefore, I disagree with OSM's proposal to hold back on funding. As admitted by OSM in their justification, the States have requested a level of funding near $300 million for F.Y. 86. This level of funding would not bankrupt the fund by the end of F.Y. 86 (see Table 12, page 86), and would provide for the greatest return on the dollar. I encourage the Committee to look closely at OSM's funding proposal for the remainder of the program.

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Re: Subsidence Insurance

Another issue that is not visible in the budget is the funding of subsidence insurance programs. As you are aware, we were able to get your attention for the F.Y. 85 Appropriation which authorized up to $3 million to be available to a State to establish a subsidence insurance program. This came after the initial efforts of Governor Herschler in February, 1983 alleging subsidence insurance to be a cost effective way of dealing with subsidence problems in developed areas. However, the Administration has continually drug-its-feet on this policy matter. Now we have authorizing legislation and the Administration insists that they must promulgate regulations to define relatively clear terms of the legislation like "establishment", "private property", "self-sustaining", and "State-administered" before they will accept grant applications. All resulting in more and more delay. In fact, we attempted once again this year to legislate State legislation, however, it failed because we still can not anticipate the rules of the game. I can only encourage your continued cooperation and pressure to get this important policy issue resolved as soon as possible.

Re: Allocation of Secretarial Share Monies

There remains one important issue that has not yet been resolved. As you are aware the Administration has stated that they will come forward with an allocation policy during the spring of 1985. This issue has been the focus of considerable debate. As a State that shall contribute significantly to the AML fund, we are looking for a fair and equitable solution. We have not and do not favor a distribution formula that relies soley on NALI. From the enclosed letter from Governor Herschler to our Congressional delegation, you will find that we favor Governor Schwinden's proposal as a fair solution among the States. Your continued involvement in this issue is encouraged, however, I believe it is time for solutions.

Sincerely,

Lyle Randen
Administrator

LR:dmm

cc: Governor Ed Herschler
Director John Ward

Public Service Commission
State of North Dakota

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February 21, 1985

Tim Gallagher
Office of Governor
State of Montana
400 N. Capitol St.
Suite 330 South
Washington, D.C. 20001

Dear Tim:

This letter is written to express some concerns regarding the FY 86 budget and appropriations proces for the Office of Surface Mining (OSM) and the Abandoned Mine Land (AML) pr[illegible]am.

First, it is unfortun[illegible] that OSM continues to view the National Abandoned Land Inventory [illegible]) as the exclusive "answer" or "basis" for allocation of the discret[illegible]ry share of the AML fund. While well-meaning individuals in OSM probab[illegible]nt to be objective and efficient about NALI and discretionary fund alloc[illegible]n, the NALI process is simply "garbage in, garbage out." "Garbage in" b[illegible]r field investigators with little information are asked to place a doll[illegible] value on each inventoried AML site. Such estimates are little more th[illegible] "wild guesses" in which "high side" estimates are encouraged in ord[illegible]o move more money back to that state. To make the process more suspect, OSM's field offices are not equipped to verify NALI costs. Rarely do field offices have the engineering and construction expertise to second guess the "wild guess". Consequently the "garbage-out" will be an allocation of funds based on bluff and gamesmanship not facts and objective analysis.

Second, while NALI is subject to widespread abuse, it is also potentially a great waste of federal funds. Anyone can see that the cost of NALI update is much more than the $440,000 OSM states on page 87 of OSM's Detailed Budget Justification for FY '86. The $440,000 does not include field office and state program costs, i.e., actual annual costs could be 10 times higher.

Third, given the federal deficit problems FY '86 appropriations could be dramatically cut for the AML program by splitting out engineering and design costs from AML construction costs and deferring the relevant appropriations for state AML construction for one year. This would be a reasonable step to help resolve a bad situation. However, in undertaking this step some consideration ought to be given to the procedure OSM should use in allocating

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the reduced appropriations. States with small amounts of obligated grant funds should not be treated the same as states with great amounts of outstanding grant funds. Simple proportionate reductions state-by-state would not be fair. Similarly construction grant applications should not be subjected to two rounds of preparation, submittal and review. That is, once construction grants have been approved the engineering and design funds should be obligated and the following year, when construction funds are needed, the construction funds should be released without unnecessary bureaucratic fanfare.

In short, reliance on NALI to allocate discretionary funds should be cut back and substitutes like historic coal production and discretion should be used. Appropriations could be cut back but state-by-state proportionate reductions would be unfair to those states that operate with little year to year carry-over of federal funds.

Sincerely,

Lynn L. Schloesser
Director
Abandoned Mine Lands Division

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ENVIRONMENTAL POLICY INSTITUTE

TESTIMONY
OF
JAMES S. LYON
DIRECTOR
CITIZENS MINING PROJECT

BEFORE THE
HOUSE INTERIOR AND INSULAR AFFAIRS
SUBCOMMITTEE ON
ENERGY AND THE ENVIRONMENT
REGARDING FY'86 OSM BUDGET

FEBRUARY 22, 1985

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Thank you Mr. Chairman, I am James S. Lyon, Director of the Citizens Mining Project of the Environmental Policy Institute (EPI). EPI is a non-profit, non-partisan, public interest organization dedicated to representing citizen concern regarding the impacts from energy, water, and agricultural development. In the 1970's, EPI worked for the passage of the federal Surface Mine Control and Reclamation Act. After Congress passed this landmark legislation in 1977, EPI established the Citizens Mining Project to monitor the Office of Surface Mining (OSM) and the states' compliance with the law. In addition, the Project assists coalfield citizens to better understand and exercise their rights under this Act. Since the Act's passage, EPI has regularly testified before this Committee regarding the status of the Act's implementation and enforcement, and the adequacy of OSM's budget to meet its mandated responsibilities.

The Office of Surface Mining is plagued with severe problems in its implementation and enforcement of the Act. Many of the Agency's problems have been well documented over the last several years. Some of these problems are a direct result of reckless initiatives of the Watt administration. Others have been created more recently as a result of the Agency's inability, or unwillingness, to respond to the certain state enforcement failures. At the time that these problems were first surfacing, OSM and certain states often explained that these were programmatic "paper" problems and not "on the ground" environmental abuse. That, however, is not the case today in the coalfields. As Mr. Galloway will point out in his testimony, we are now seeing a return of systemic mining abuse of pre-Act severity. Appearing over the last couple years are thousands of new two-acre mines, thousands of illegitimate coal exploration sites, and thousands of acres of new unreclaimed lands. OSM has not, nor cannot, deny the existence or extent of this new abuse. So the reasonable question remains: what is to be done about it?

In reviewing the OSM's FY'86 budget, we fail to see any resources or funds being made availible to respond to these new problems. Furthermore, in meeting with OSM, officials were unable to tell us how they anticipate meeting the increased oversight and enforcement workload associated with these problems with existing resources. Therefore, we must conclude the OSM does not have the resources nor the intention to respond to this gross abuse.

One of the central purposes behind the Surface Mining Act was to stop systemic mining abuse in the field. Certainly this too must be OSM's top priority. However, OSM apparently doesn't see it that way. OSM needs more inspectors. We strongly recommend that resources be diverted from less priority programs with-

in the Ageny, or certainly within the Interior Department, for that purpose.

We have watched OSM very closely over the years with growing dissatisfaction. It is an agency that has been subject to immense political pressure inside the Interior Department. During the debate prior to the Act's passage, Congressional members voiced concern that OSM, as a regulatory agency, must be insulated from pro-development factions within the government. It was recommended that OSM be placed under EPA rather than the Interior Department which already had a dismal record of regulating water quality, and mine health and safety. Past failure in these areas prompted Congress to remove these responsibilites from Interior's jurisdiction. However, OSM was, in fact, placed in the Interior Department's realm, but with promises of insulation. Over the last several years, we have witnessed a deterioration of that insulation. If the Agency continues to prove unwilling to enforce this law, and if its responsibilites continue to be undermined by pro-development forces within the Department, we will have to consider calling for the total transfer of OSM functions over to EPA, for the sake of saving the Act's effectiveness. We would, of course, continue supporting this Committee's oversight jurisdiction.

We are deeply concerned with other portions of the OSM budget as well:

RETURN OF FULL PRIMACY FOR TENNESSEE AND OKLAHOMA

OSM proposes to return primacy to Tennessee on June 1, 1986, and has budgeted its federal program accordingly. Despite the fact that a bill, essential for this action, is very uncertain for passage in the Tennessee legislature this year. And despite the fact that industry is split over the issue, that citizens organizations in the state strongly oppose such action, at this time, and prior to OSM opening up, not to mention considering public comment, the Agency has apparently already made up its mind. We question where OSM will get or borrow the funds to continue its federal program in the state if a bill is not passed?

OSM removed only part of Oklahoma's state program, and therefore a state legislative action is not needed for its return to full primacy. In its budget, OSM intends to return full authority to the state by October 1, 1985, and thus end funding for its direct federal enforcement presence. Oklahoma citizens organizations strongly oppose such an early return to primacy, and industry is very bitterly split over the issue. From our perspective, significant problems still exist in the Oklahoma regulatory authority, and it is extremely premature to hand back the program after such a short time. Certainly it is premature for OSM to be making this assertive projection prior to holding public hearings and comments on the matter.

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ABANDONED MINE LAND FUND - STATE SHARE

OSM is recommending a reduction of $46.5 million in abandoned mine land fund (AML) state share grants. The Agency has been extremely reluctant over the years in releasing this money back to the states for reclamation. Congress, in its wisdom, has substantially increased the state share appropriations in the past. Once again OSM is sitting on the money. This time its excuse is the need to ensure the long term management stability of the fund, since due to Congressional action, they are now appropriating more funds to the states than they collect each year.

This argument is inconsistent with the Congressional intent of Title IV. There is a finite number of abandoned mine land sites in the coalfields. If the states show that they can adequately handle more money to address more reclamation, then OSM should give it to them. And they should give it to them now, not over a period of years. It will always be more economical to reclaim abandoned lands today than it will be tomorrow.

We are aware that some states have not been able to spend the full allocation from last year. In these cases, EPI does not support further increases. We do, however, call upon OSM to assist these states to correct any program problems so that higher reclamation levels can be met.

ABANDONED MINE LAND FUND - EMERGENCY RESPONSE

One of OSM's primary responsibilites under Title IV is to directly respond to emergency problems created by abandoned mine sites. Such problems include cave-ins, mudslides, mine fires, etc. OSM has currently run out of FY'85 appropriated federal share dollars for emergency response. According to OSM, it has had to postpone its response to several emergency projects until it obtains approval for an additional $11 million. Such postponement is inexcusable.

Furthermore, the Agency has recommended only $11 million for emergency response in FY'86. This recommendation was made despite the fact that OSM will spend approximately $22 million in FY'85, $19 million in FY'84, and $15.9 million in FY'83. Clearly OSM is not being realistic to its emergency duties, or program, and is inviting more future delays in responding to such serious problems.

ABANDONED MINE LAND FUND - RAMP

Once again OSM is seeking to abolish the rural abandoned mine land fund, despite provisions in the Act for its existence, and Congessional action over the last several years to save it. Following our panel will be citizen organization representatives presenting testimony regarding their concerns about this program.

OSM's argument has been that the states are better able and more efficient to administer RAMP type projects than the Soil Conservation Service (SCS). We cannot find, however, any indication where OSM has transferred or earmarked the $6.4 million SCS RAMP reduction over to the states for administering RAMP type projects in lieu of the SCS. In discussions with OSM, this week, officials informed us that federal share dollars that go to the states can be spent on projects the state approves, and that OSM makes no requirements, or even recommendations that the states' spend money on RAMP type projects.

OSM's argument that the states are more capable than the SCS of administering RAMP type projects is fallacious. This is not a transfer of functions for management effeciency, OSM is simply abolishing the program and its Congressional intention.

We appreciate the ennormous pressure Congress is facing this year to address the budget deficit. As earlier stated, OSM is in dire need of more inspection and enforcement resources. We are not calling upon this Committee to seek an increase in the Interior budget. Instead, we are calling for a reallocation of resources either within the Agency, or within the Department as a whole, so that OSM can meet its mandatory responsibilites. Regarding the abandoned mine land fund, we are asking for an increase, but only of which comes from the already collected, fee generated trust fund, of which a considerable amount is currently sitting idle in the Treasury.

Thank you for the opportunity to testify.

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STATEMENT OF L. THOMAS GALLOWAY

ON BEHALF OF

SAVE OUR CUMBERLAND MOUNTAINS, INC.

Good Morning. My name is L. Thomas Galloway and I am here today on behalf of Save Our Cumberland Mountains, Inc., an Appalachian citizens' group long involved in surface mining issues. In the short time that I have today, I wish to address one major issue relating to the proposed OSM budget for FY 1986 -- namely, whether the budget adequately provides resources to address the widespread abuse of the Act that has occurred and is occurring in a number of the major coalfield states.

It is a sad reality that despite the seven years of work by this Committee to pass legislation to end the irresponsible mining of coal in the United States, that today, over seven years after the Act went into effect, widespread abuse continues.

No matter the approach used to evade the Act, the ultimate consequences of the irresponsible mining practices is, of course, a devastated environment. The means used to evade the Act's requirements, however, has varied dramatically -- from crude non-compliance to sophisticated attempts to use exemptions and corporate structures to avoid reclamation requirements. Perhaps the most widely known of the abuses, known in significant part because of the efforts of this Committee and the citizens group I represent today, is the so-called "megabuck" problem. Since 1978, almost half of all federal cessation orders issued by OSM (approximately 2,000) were ignored by coal operators who mined coal in the face of federal enforcement orders and left sites just as

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they had before the Act was passed, i.e., unreclaimed. These operators also failed to pay some 120 million dollars in penalties.

The second most widely known of the abuses concerns the cynical use of the two-acre exemption in Section 528(2) of the Act to avoid the Act's requirements. Contrary to the clear intent of this Committee to limit the exemption to pick and shovel operations, the exemption has been systematically abused by a number of the largest coal producers to avoid the Act's requirements for their contract mines. There are between 2,500 to 3,000 of these mines, few of which were reclaimed, and almost none of which were reclaimed to the Act's standards. Moreover, the abuse of the two-acre exemption has exploded in the past two years, especially in Kentucky, despite the assurances of OSM to this Committee that the abuse was dying out.

Indeed, OSM actually funded the Kentucky two-acre program which produced the gross abuse.

The third form of abuse involves so-called coal exploration activities. In the past two years, and again especially in Kentucky, over 2,800 persons or corporations gave notice of their intent to explore prior to mining. A very large number of these exploration activities (based on sample OSM inspections, I would estimate well over half) were coal mines which have been left unreclaimed.

A fourth form of abuse is found in bond forfeitures in the interim program. Bonding in the interim program was a

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state function. Bond levels were set by the states. It was often cheaper to forfeit the bond than to reclaim. Not surprisingly, a flood of bond forfeitures occurred in the interim program. In many of these cases, the bond could not even be collected. In cases where there was in fact a collectable bond, it was adequate for only cosmetic measures. The result of the bond forfeitures was therefore unreclaimed mines in the hundreds. These mines differ from the megabuck mines only in that no one bothered to take enforcement action. Thus, many of these people are still mining today as they have never been included in the Section 510(c) permit denial system which OSM is only now beginning to establish, and then only under Court Order. Mr. Dean will address this issue in some detail in his testimony.

A fifth form of abuse are the wildcat miners who do not bother to construct any legal smokescreen; they simply mine and leave. Some wildcatters are caught in the megabuck network. Most, however, escaped enforcement and left unreclaimed sites.

Indeed, it is a bitter irony that, according to state officials, wildcatting under the Act appears to be diminishing; no doubt because it is so easy to invoke one of the forms of abuse and maintain a pretense of legality.

There are other forms of abuse -- improper bond release by states when the site is unreclaimed and improper use of the on-site construction exemption, to name two. These account for still more hundreds of unreclaimed sites.

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All told, we believe that, at a bare minimum, somewhere between 6,000-8,000 mines have been left unreclaimed since this Committee passed its landmark legislation. In fact, the actual number of unreclaimed sites is probably higher. The 6,000-8,000 figure does not include improper bond releases and relies on incomplete state and OSM government files.

When I say unreclaimed, I do not mean that the operator failed in some minor way to meet the requirements of the Act. When I say unreclaimed, I mean, in the overwhelming majority of circumstances, gross non-compliance -- spoil over the downslope, highwalls, landslides, black water discharges, acid discharges, and inadequate or non-existent drainage controls.

If one visits such sites, one will find these violations existing today. The environmental damage continues; it does not stop when the operator abandons the site. Indeed, in certain circumstances, the damage increases with time.

Yet, despite the enormity of the abuse, little enforcement action has been taken, and what limited enforcement action has occurred has been ill-directed and grossly inadequate.

For the Surface Mining Act to have any meaning, it must be able to prevent this irresponsible mining. For the FY 1986 budget to be adequate, it must propose funding adequate to address the problems.

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I therefore am at a loss to understand how OSM can in good faith propose its FY 1986 budget to Congress which does not even mention, much less propose solutions or request resources to address the problems I have raised. Of the problems I have mentioned, the proposed budget addresses only one -- the megabucks' issue and the need for funds to implement the settlement agreement I signed with the Government on October 15, 1984. And I would respectfully suggest that in this one area for which OSM requests funds, it is impossible for this Committee, the Appropriations Committees, or the public to determine if they have requested sufficent resources to address the problem or if they have requested the right resources. Their budget proposal on the issue consists of a few sentences repeated at several different points in both the FY 1986 budget and the supplemental. I would urge the Committee to require OSM to put before the Committee within a reasonable period of time its detailed plan for handling the megabuck problems, i.e., the 2,000 unabated COs and the 110 million dollars of uncollected penalties, and what resources it plans to devote during the remainder of FY 1985 and FY 1986.

As far as the other problems are concerned, OSM does not, as far as I can tell, devote a single word to resolving the matters. Most of the problems I have raised require significant inspection and enforcement activity with all the follow-up work that initial enforcement action involves.

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Where, one would ask, are the resources to inspect and enforce aginst the two-acre mines? The State of Virginia has informed OSM that it will not take action against the 1,000 or so abandoned sites in Virginia. Thus, it remains for OSM to take action. Where are the resources?

Even if OSM is able to convince Kentucky to take initial action against its 1,500-1,800 two-acre sites, significant federal oversight resources will be required which will require substantial inspection resources. Now, OSM inspects two-acre mines only if they come up in the statistical sample. Moreover, a number of the Kentucky two-acre sites are interim program sites requiring OSM, not state, action and therefore OSM inspection resources.

Also, additional state resources may be necessary (which would as a practical matter require 50% federal matching money), especially in Kentucky, which has bond forfeiture, two-acre, coal exploration and bond release problems to address these problems.

A similar problem is presented by the coal exploration sites. Kentucky does not even have a list of the sites; the workload will be enormous; and even if Kentucky takes the lead, significant OSM oversight resources will be needed. Again, where interim sites are involved, OSM will have primary responsibility.

An even greater problem is presented by the bond forfeiture sites. Because these are interim sites, OSM must itself inspect and enforce. Since somewhere between

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1,000-2,000 sites are involved, additional OSM inspection resources will be necessary.

Bond release sites present a similar problem. The number of unreclaimed sites in which the bond has been released is unknown. I am told that a preliminary review in Kentucky indicated that almost 50% are improper, although not all of the 50% involved serious non-compliance.

As I have emphasized, the OSM budget seeks no additional funds to handle these problems. And it is certain that existing inspection resources are inadequate. The normal complement of OSM inspectors are stretched to the utmost simply to meet the statistical sampling oversight inspections, do follow-up inspections, respond to citizen complaints and so forth.

Moreover, there are critical, ongoing problems with the states outside of the gross abuse issues requiring use of inspection resources. Kentucky, for example, according to OSM, enforces against only one of fourteen violations it observes. Similarly, Kentucky does not take action against unabated state cessation orders or assess fines, thus creating the same situation at the state level that produced the "megabucks" debacle at the federal level.

I believe that I can illustrate the need for further OSM resources by merely noting that in one of the areas of worst abuse, Eastern Kentucky, OSM will have 8 inspectors if its budget is allowed to go final.

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If one wishes to seriously address the gross abuse, the issue presented is not so much whether additional resources are needed, but how much and in what form. I would suggest that the Committee ask Secretary Hodel to direct the OSM to produce a plan for dealing with each of the major areas of abuse, with a detailed statement of the resources necessary for each area. This is a necessary first step before this Committee or the public can reasonably respond to what funds are necessary for FY 1986 or FY 1985.

CONCLUSION

There is, of course, much more at stake here than the FY 1986 budget. What is at stake is whether the Act can be enforced effectively in situations of gross abuse. As I have noted, the form of the abuse varies. Some is by large companies; some by small. Some abuse occurs at marginal operations. Other abuse occurs at operations backed by very wealthy and politically prominent individuals. The most effective enforcement strategy against the abuse will therefore vary.

However, the Act provides sufficient tools to deal with the abuse. Section 510(c) is a powerful tool which can be used in many situations. Section 518(f) can be used to pierce corporate veils. Limited use of the criminal sanction in Section 518 would be appropriate.

Extra resources will not alone solve the problem. However, without sufficient resources, there is no hope.

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If we do not act now, we will have acquiesced in a system of regulation that allows a large number of mines and operators to ignore the Act with impunity. It is inevitable in such a situation that non-compliance will increase because of (1) the competitive disadvantage suffered by those complying with the Act and (2) the fact that non-compliance will produce little risk of sanctions.

For our part, we will press for action and improved management at OSM. Where OSM balks at taking action, we will invoke the power of the Courts to compel compliance, as we have successfully done in the past. However, without additional resources, this may prove to be a hollow effort.

Thank you. I will answer any questions that the Committee may have.

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NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036 202—797-6800

Statement of Norman L. Dean
Director of the Public Lands & Energy Division
National Wildlife Federation

presented to the
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives

February 22, 1985

Mr. Chairman and Members of the Committee. I am Norman L. Dean, Director of the Public Lands and Energy Division of the National Wildlife Federation. I greatly appreciate the opportunity to testify today on behalf of the 4.1 million members and supporters of the Federation.

As you know, the Federation historically has been very concerned with the regulation of the adverse impacts of surface coal mining operations. We pressed for passage of the Surface Mining Control and Reclamation Act, and since its passage have sought to work with the Office of Surface Mining and Congress on enforcement of that law. Unfortunately, all too often we have found ourselves in Court challenging the actions of OSM, as we are today in contesting former Secretary Watt's reckless weakening of the agency's permanent program regulations.

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As the Chairman has recognized on a number of occasions, the Office of Surface Mining is an agency riddled with significant problems. These include:

* a breakdown in management and resulting poor morale, exacerbated by the absence of a permanent Director for over a year;

* Regulatory chaos due to Secretary Watt's rewrite of the permanent program regulations and our successful court actions challenging many of those revisions;

* the failure of the agency to stop gross abuse of the environment by irresponsible miners which necessitated the so-called Gasch and Parker Court Orders and subsequent settlement agreement to which NWF was a party;

* the failure to stop the abuse of the Act's 2 acre exemption;

* the failure of OSM to oversee state surface mining programs adequately;

* major breakdowns in the federal surface mining programs in Tennessee and Oklahoma;

* the failure both to collect and spend Abandoned Mine Land (AML) funds; and

* inadequate federal enforcement of the law.

Facing so many fundamental problems, it is imperative that OSM begin setting priorities for correcting these related problems. To this end, the National Wildlife Federation is preparing a comprehensive review of OSM's problems. This review, which is to be completed within the next month, will recommend to this Congress and the new Secretary priorities for action.

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Copies of the study will be made available to this Committee as soon as possible.

Today I would like to focus my testimony on one high priority issue: the need for OSM to develop a nationwide computer data base of strip mine law violations. In our view, such a data base could be the single most effective tool for stopping the repeated flagrant abuses of the Surface Mining Act by irresponsible coal miners. For the next several minutes I would like to outline for the committee: (1) the need for a nationwide computer database of surface mining act violations; (2) what such a computer system should include; and (3) the need for a more sophisticated and extensive computer data base than that currently contemplated in OSM's proposed budget.

Need for a Section 510(c) Computer Database

Congress, in enacting the Surface Mining Act mandated that any violator of the Surface Mining Act, or other law or regulation governing air and water pollution, should be prohibited from obtaining a mining permit until he has taken steps to correct his outstanding violations. Section 510(c) of the Act requires every applicant for a mining permit to submit a list of all of his violations of relevant laws and regulations. That Section further provides that a mining permit shall not be

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issued to an applicant with current violations until the applicant submits proof that the violation has been corrected or is in the process of being corrected."1/

In short, Section 510(c) of the Act provides an important enforcement mechanism whereby those who have violated the law are prohibited from opening new mining operations until they have begun cleaning up their past abuses.

This enforcement mechanism has numerous advantages. First and foremost, it is simple and inexpensive. Once the violations are cited, it requires no extensive network of inspectors and no major continuing expenditure of funds. OSM and the state regulatory authorities already maintain most of the records needed to use 510(c)--the lists of violations of the Surface Mining Act. Considerable data also exists on those individuals who control the coal mining firms who are consistently violating the law. What is needed now is an investment in a computer system for pulling all of this data together into a single, complete data base.

Second, the 510(c) enforcement mechanism is fair and reasonable. It does not provide for the closing of ongoing mining operations. Mine operators who have outstanding violations can continue to mine or even open new mines if they submit adequate abatement plans for curing their existing violations.

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Third, a computer based 510(c) enforcement program would be cost effective. OSM has been unable to collect over $150 million in fines and fees using direct enforcement efforts. Even if the system resulted in the collection only of a small fraction of the outstanding fees and fines, a 510(c) computer system would almost certainly be able to pay for itself in the first year or two of operation.

Fourth, given the number of coal mines in the country, over 6,300 of them, and the considerable number of violations of the Surface Mining Act, a comprehensive computer data base is the only practical means of fully carrying out OSM's statutory responsibilities.

What a 510(c) System Should Contain

How would an adequate 510(c) enforcement system work and what should a 510(c) computer data base system contain?

The enforcement of Section 510(c) would be relatively simple. The Office of Surface Mining would maintain up to date lists of: (a) those entities which have outstanding violations of the Surface Mining Act; and (b) all persons who own or control such entities. Then whenever an entity applied for a permit to mine coal, OSM or the state regulatory authority would check the computer lists to determine whether that entity or a person who

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controlled that entity had an outstanding violation of the Act. If they did have such an outstanding violation, they would not be issued a permit until the violation was corrected or an abatement plan approved for correcting the violation.

Obviously, the heart of such an adequate 510(c) system would have to be complete and accurate records of all major types of violations of the Surface Mining Act. Among the categories of records that should be included in the system are:

Abandoned Mine Land Fund Payments--As this Committee is well aware, every coal operator must pay fees into the Abandoned Mine Land Trust Fund whose purpose is the clean up of pre-Act mines. The most recent records available to us indicate that there are at least $30.7 million in outstanding bills payable to the AML trust fund. This figure may in fact understate the amounts actually due. According to a recent GAO report, there are instances where coal production reported to OSM by the operators is less than their production records.2/

OSM has had enormous difficulty attempting to collect these AML fees. Part of the problem has been the number of mines involved--over 2000 mines have not paid their fees. Another factor has been the cost and delay involved in seeking Court ordered recovery of the fees. A coal operator who resists OSM court action can delay payment for years.

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Section 510(c) offers an attractive alternative for collecting these past due fees. By refusing to grant new permits to mine operators controlled by those who have fee payments outstanding, OSM will almost certainly encourage expeditious payment in many instances. This approach would avoid the high cost and delay inherant involved in seeking Court-ordered recovery of fees.

Uncollected Section 518(h) Penalties--Similarly, there are presently over $110 million in unpaid fines due the federal government that were assessed under Section 518(h) of the Act when an operator failed to correct a violation for which a citation had been issued by federal inspectors. Despite repeated efforts, OSM has been unable to collect these fines using other enforcement methods. As in the case of the AML fees owed OSM, these fines can probably be collected most readily by denying new mining permits to those who control the operators with the unpaid fines.

Uncollected Section 518(a) Penalties--Section 518(a) of the Act authorizes OSM to assess fines of up to $5,000 per day for violations of permit conditions or provisions of the Act. It is estimated that there are between $25 and $30 million in uncollected fines levied under Section 518(a). Unfortunately, OSM does not even have a complete list of those who have not paid these fines. This is another area in which the use of a Section

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510(c) computer system would be good for the taxpayer and good for the environment.

Unabated Cessation Orders--As this Committee has heard many times, one of OSM's most troublesome problems has been its inability to enforce cessation orders. In more than 2000 instances since the Act was passed, mine operators violated the law, were issued cessation orders and simply ignored those orders and walked away from the damaged mine site without repairing the damage. OSM can choose to enforce these 2,000 or more cessation orders by following the costly and time consuming route of direct enforcement. Or, OSM can simply choose in the majority of cases to employ Section 510(c) and stop these law-breakers from mining coal in the future until they commit to clean up their past damage. This latter course appears to be a cheaper and more effective approach.

State Enforcement--Finally, there is the issue of enforcement of the Act at the state level. The problems that brought about the "megabucks" case at the Federal level--unabated cessation orders and uncollected fines--are being repeated in virtually every major coal state. The state regulatory authorities have been unable to enforce the law adequately, in part because of inadequate resources.

If OSM can create a complete 510(c) computer data base and make it available to the state regulatory authorities, the major

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coal states will have a less costly alternative enforcement mechanism. This could in turn avoid the potential for numerous "mini-megabucks" cases in the major coal states.

This is a task that the states cannot undertake on their own. No state has the resources to create and maintain its own national database of strip mine violations. This is an area where if the job is to get done, OSM must do it.

OSM's Budget Proposal

In response to the recent joint settlement of the Gasch and Parker cases--to which the National Wildlife Federation was a party--OSM requests an FY 1985 supplemental budget appropriation of $2.6 million. It is unclear from the OSM budget documents how much of this request is for the 510(c) computer system required by the settlement.

OSM's budget submission implies that the 510(c) system that will be developed with the supplemental appropriation will be limited to "failure to abate cessation orders" issued between May 3, 1978 and the date of the Court order and to civil penalties assessed under Section 518(h) as a result of those COs.3/ If this is the case, OSM is making a serious mistake. The Court settlement does not include several of the most significant categories of violations that logically belong in a 510(c)

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computer data base. As I have already outlined, a 510(c) system should include non-payment of AML fees, non-payment of 518(a) penalties, and state cessation orders and 518(h) records--none of which were within the scope of the Parker and Gasch cases. It simply does not make sense to develop a major computer system and not include within its data library much of the most important and useful information.

Conclusion

In conclusion, Mr. Chairman, we urge this Committee to press OSM to build a complete, efficient, and comprehensive computer data base system for enforcement of Section 510(c) of the Act. That system should include all major categories of violations of the Act and not be limited simply to those that were within the scope of the Gasch and Parker Court settlement.

Such a 510(c) computer data base would appear to offer the best hope of bringing to justice that small but significant minority of coal operators who are flagrantly violating the law and abusing the environment.

Thank you again for this opportunity to present our views. I will be happy to answer your questions.

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FOOTNOTES

1/ Section also 510(c) provides that no permit shall be issued to an applicant if the regulatory authority finds that the applicant controls, or has controlled mining operations with "a demonstrated pattern of willful violations of this Act of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this Act. 30 U.S.C. §1260(c) (1983).

2/ Verification of Abandoned Coal Mine Reclamation Fees Reported and Paid to the Department of the Interior through Third Party Sources, GAO/RCED-84-202 (September 28, 1984).

3/ U.S. Department of the Interior, Budget Justifications, F.Y. 1986, Office of Surface Mining Reclamation and Enforcement at OSM-38.

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STATEMENT OF DAVE MANKAMYER, WESTERN PENNSYLVANIA COALITION FOR ABANDONED MINE RECLAMATION, BEFORE THE SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT, ON THE OFFICE OF SURFACE MINING BUDGET FOR FISCAL YEAR 1986, FEBRUARY 22, 1985

Chairman, committee members, and honored dignataries. My name is Dave Mankamyer of Somerset, Pennsylvania and I am honored to have the opportunity to present to you, the leaders of our nation, what we in Western Pennsylvania feel is a chronic problem and an important issue to our area. I am a farmer and businessman and serve as chairman of the Somerset County Soil and Water Conservation District where we promote wise resource management for our county. I also serve as chairman of a 22 county group called the Western Pennsylvania Coalition for Abandoned Mine Reclamation (WPCAMR). This coalition consists of membership from the bituminous coal mining counties of Western Pennsylvania. The goals of our coalition are to reduce hazards to health and safety; eliminate soil erosion and improve water quality; improve the economic utilization of affected land resources; and to improve the local economy of our region through abandoned mine reclamation programs available through the Surface Mining Control and Reclamation Act of 1977.

Due to our proximity to the steel mills and industrialized parts of Western Pennsylvania our coal fields have been of major significance in supporting efforts of the United States in two world wars as well as supplementing activities related to the industrial revolution. We in Western Pennsylvania are proud of our fathers efforts to provide this nation with the coal and steel which helped spawn the American Industrial Revolution. The sad fact is our energy resource was sold to cheaply. Our coal did not have built into it the price of protecting our environment. During this time billions of tons of coal have been mined at the expense of thousands of acres of useful and productive land that has been rendered not only hazardous, from the stand point of health and safety, but so disturbed that it is responsible for a large amount of environmental degradation. These pollutants occur in the form of acid mine drainage from improper mining and sedimentation of soil due to severe erosion which has resulted from the absence of adequate revegetation. Millions of tons of valuable top soil have eroded from these abandoned sites clogging our waterways and filling our water impoundments.

These are the results of the efforts of our fathers to support this great nation during not only the trying times of World War but during periods of industrial growth as well. We do not complain of our Fathers efforts to aid our country, but we do object to the lack of support in our plight to sustain a reclamation effort especially when the vehicle for a full scale reclamation program exists with three potentially effective delivery systems to service the needs of all affected Americans.

In 1977 the Congress of this United States, in its fair and infinite wisdom, passed the Surface Mining Control and Reclamation Act. Besides establishing Mining regulations to help protect our environment, a National Abandoned Mine Lands Fund was established to address reclamation of scarred areas. This fund is maintained by collection of fees on the active mining industry at a rate of $.35 per ton for surface mined coal and $.15 per ton for deep mined coal. To date about 1.4 billion dollars has been collected and earmarked by law specifically for land reclamation.

Of the three possible deleivery stystem, i.e. the state Abandoned Mine Lands Program, the Office of Surface Mining Program and the Rural Abandoned Mine Program (RAMP) administered by the U.S.D.A. Soil Conservation Service, only the latter delivery system has achieved any degree of consistancy and efficiency and is the only system which has produced any results in our area. Through RAMP, and its the only system to

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make this claim, local input through conservation districts and county RAMP committees is a vital part of the decision making process. This local knowledge and input helps focus attention on sites that local people feel are the most severe and provides for the most significant improvements.

Approximately 1.4 billion dollars has been collected from our coal companies for this national reclamation fund. Up to 20% of the total .28 billion, or 280 million dollars, could have been pumped into our local economics to reclaim our scars and put our unemployed citizens and idle machinery to work. To date only 80.325 million dollars have been released to RAMP nationwide over an eight year period. That leaves an additional 200 million dollars that could have been used to heal scars left in areas such as ours. to alleviate health and safety hazards, clean-up our environment, and put our people to work returning not only pride in themselves but their homes and government as well.

The people of Western Pennsylvania have a legacy that can not be told in words or in the cold ink of newsprint. They leave a story of determination that has been written in blood, sweat, and tears. The sacrifices that these people made were so great as to defy description. They came to the United States with the hope in their hearts that things could be better and the strength in their wills to make them so. They worked impossibly long hours under insufferable conditions to scratch out an existence for them and the children who would follow. On their backs the very essence of the United States we know today was built. Their toil in the mines and the mills built the greatest civilization that the world has ever seen. Many of these people who could barely speak English marched off to defend this country without question.

Just last week a good friend of mine and his wife were driving through the coal town of Windber, Pennsylvania which by the way was named for Berwind Company which owned the mines. This friend's wife remarked that the only thing that seemed to be prospering in the town were the funeral homes. Every one of them looked to be flourishing and recently remodeled. My friend was so moved by her comments that he called me to relate this bitterly ironic story.

I come before you today to ask that the people of this area not be forgotten. If this country should turn its back on the very people who built it then it is in my estimation tragic. If in fact that every death is a tragedy, then surely the death of an entire area is the darkest tragedy of all.

The resources exist in western Pennsylvania to heal the scars. The equipment, land, and factories are sitting idle waiting for their life blood, the people, to come and put them back to work. Unemployment has been in double digits for several years and closed at 15.8% in Somerset County last year. It has reached 21% in the past year. The effects of not working on a people that have always worked and want to work now is incalculable.

I represent a local unit of government known as a Conservation District. For me to be sitting in the halls of our nation's Capitol today is an honor and a priviledge I shall long remember. I ask that you allow the local

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people in their Conservation Districts to direct a program to reclaim the abused land. In Somerset County we have reclaimed approximately 90 acres under the Rural Abandoned Mine Program. This program gave us the opportunity to direct a federal program. For that we are grateful and want to continue to control our reclamation programs. In fact we reclaimed a 39 acres site in Windber Borough through the efforts of Congressman Murtha, Borough officials, and the Soil Conservation Service. An adjacent 20 acre hazardous site lies eroding waiting to be reclaimed but lackk of adequate funding to the Rural Abandoned Mine Program prevents ur from doing this work.

Another important aspect of a viable Rural Abandoned Mine Program is the positive impact upon our water resources. In Pennsylvania alone thousands of miles of streams have been so degraded by acid mine drainage and sedimentation that they're virtually useless for anything. According to the Pennsylvania Fish Commission a conservative figure of 3000 miles of major streams degraded by mining related pollutants existed in 1974. In 1984 a reduced figure of 2200 miles of degraded major streams still existed. The good news here is that the quality of our streams is improving through reclamation programs and more environmentally sound mining practices. The bad news is that much more work still needs to be done and our task of clean-up will be virtually impossible if adequate funding is not available. In Western Pennsylvania we have the water quantity, but not quality to stimulate economic growth for industrial use, for agricultural use, for recreational use, and practically any type of activity requiring a clean water resource.

The source of acid mine drainage and sedimentation still remain. In Pennsylvania 322 priority one reclamation sites still exist and over 240,000 acres of disturbed land remain. What reclamation work has been done in our area has been excellent and effective and we are grateful for the opportunity to have it done, but we feel not enough has been done due to inadequate funding levels.

It seems to many of us in areas like Western Pennsylvania that there is an obligation to return these funds to us through the Rural Abandoned Mine Program to help get us back on our feet to become self sustaining once again. The beauty and wisdom of all this is that full funding of the Rural Abandoned Mine Program will not adversely affect one of our nations primary objectives, that of reducing the Federal deficit. The funds for this program are derived solely from coal companies and are specifically intended for abandoned mine land reclamation as mentioned earlier. With this in mind we feel we are not asking for any special help or hand out, but to have returned to us what we originally had in our possession, the funds to reclaim our useless abandoned mined lands to return to our citizens a healthy, safe, clean, and productive environment providing us with the opportunity to grow. Your help in securing full funding for the Rural Abandoned Mine Program will provide us with that opportunity to grow, put us back on track and make us competitive once again with our fellow Americans across the nation.

This is the type of challenge we are accustomed to and that we feel can be overcome by our people for the benefit of our children and forthcoming generations.

We have a great deal of work to do, and we would appreciate your help in doing our job. We are grateful to the Congress for the help we've so far received, but we have a great deal of work yet to do and we would appreciate the opportunity to continue our challenge. Furthermore we extend an invitation of all members of this committee to visit our area to view first hand what we fight and why we do. This invitation is especially extended to those of you who may not be from mining states and who may not have experienced what we live with.

Thank-you gentlemen for allowing me this opportunity to testify before you about our situation. It has been both an honor and a pleasure on my part.

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Summary

Mr. Chairman, committee members, and honored dignataries. My name is Dave Mankamyer of Somerset, Pennsylvania and I am honored to have the opportunity to present to you, the leaders of our nation, what we in Western Pennsylvania feel is a chronic problem and an important issue in our area. Billions of tons of coal have been mined, thousands of acres of previously productive land and thosands of miles of streams have been degraded to the point of virtual uselessness. Also along the path of this destruction hundreds of health and safety hazards have been created. I am speaking of abandoned mined lands which we live with day in and day out. We thought sincere attempts to resolve this problem would be initiated with passage of the Surface Mining Control and Reclamation Act of 1977. As yet an attempt at full scale reclamation has yet to occur.

Our coal resources in Western Pennsylvania have gone to support not only World Wars I and II but also the American Industrial Revolution which opened up the opportunity for our nation to prosper as a whole. The only complaint we have is that while the remainder of our country has prospered we have been left with hundreds of health and safety hazards and an equal amount of environmental scars.

With full funding for the Rural Abandoned Mine Program or RAMP we, the local citizenry, have the opportunity through our county conservation district and county RAMP committee to have a voice in a federally administered voluntary land reclamation program. The federal government by the same token can receive the benefit of our local knowledge and experience on these project sites.

Another benefit of an active Rural Abandoned Mine Program would be the boost to our staggering local economy. With the unemployment rate ending 1984 at 15.8% in Somerset County and having reached a high or 21% the previous year we are in dire need of the return of millions of dollars drained from our economic base. Furthermore local businesses provide local resources to stimulate additional local trade. To put our people back to work on the scars left by our Fathers would not only restore the personnal pride of our citizens but return their faith and pride in government overall.

Perhaps one of the most depressing aspects of not restoring our abandoned mine lands is the degraded status of thousands of miles of otherwise high quality water. In Western Pennsylvania we have the quantity but not quality of water to accomodate practically any type of activity or industry requiring a clean water resource. Mine reclamation programs and more environmentally sound mining are making a difference, but we can't afford to quit now when the work if just beginning.

Being not only a conservationist, a businessman, and a member of my community, but also an American. I ask on behalf of the people of Western Pennsylvania and the coal fields aross the United States that the members of this committee and the full Congress authorize full funding for the Rural Abandoned Mine Program administered by the U.S.D.A. Soil Conservation Service. Full funding levels for this program must be approved by Congress which then should instruct the Department of Interior, Office of Surface Mining to pass the authorized amount onto the Department of Agriculture for use by the Soil Conservation Service. Thank-you - closing

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STATEMENT OF BERNARD HOFFNAR, SUPERVISOR, BROAD TOP TOWNSHIP, BEFORE THE SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT, ON THE OFFICE OF SURFACE MINING BUDGET FOR FISCAL YEAR 1986, FEBRUARY 22, 1985

I am Bernard Hoffnar, an elected township supervisor from Broad Top township in Bedford County, Pennsylvania. I appreciate the opportunity to testify today on behalf of needed mine land reclamation. It shouldn't be necessary for me to be here. In 1977 Congress passed a law--The Surface Mining Control and Reclamation Act--in which a surcharge was levied on mined coal with the money to be used for abandoned mine land reclamation. However, large amounts of these funds are not being utilized for their intended purpose. The Broad Top coal field has severe abandoned mine land problems, but it is only one example of what exists in other areas of Pennsylvania and the nation.

Commercial deep mining started in the Broad Top coal field in 1855 and peaked about 1920. Strip mining started in the 1930's, peaking during W.W. II. Our coal field provided energy to help win two world wars. Coal was removed cheaply without regulation and without regard to environmental concerns. What we have left in the 50,000 acre Broad Top coal field is 7,000 acres (14%) in pristine condition; 16,500 acres (33%) with some degree of degradation problems; and 26,500 acres (53%) with severe degradation associated with past mining activity. 275 mine openings have been identified. The pH at the mouth of the two major drainage basins in the Broad Top coal field is 3.1 and 2.9. (The pH of vinegar is 3.4.) These figures come from a Soil and Water Conservation project report sponsored by a combined 3-county effort that was published in 1981. Our area is representative of a much larger problem in Pennsylvania and of other areas in the United States containing abandoned mine lands.

Many of us who live in these areas experience constant apprehension because of old abandoned tipples, open drifts and shafts, and deep strip cuts located near villages and homes. We were hopeful when the Rural Abandoned Mine Program (RAMP) of the Soil Conservation Service, USDA, and the State program for abandoned mine land reclamation were initiated, but we have become disillusioned. We thought that RAMP with its local presence would be the leading force in reclamation with the State program following the example of utilizing local citizen committees to help guide the reclamation program to solve our most pressing abandoned mine land problems. This has not happened. RAMP has only been partially funded and recently pressure has been exerted to phase it out completely. Our State program has not had personnel or the local presence necessary to confront the problem. Congress passed a good law in 1977. The need to reclaim abandoned mine land was identified and a means to collect funds was created. Something has gone wrong! The U. S. Treasury has collected nearly $2 billion. They have $400 million on hand earning no interest and reclaiming no land.

We need your help. The problems that need to be solved were created before and during W.W. I and W.W. II. The Broad Top coal field has helped the United States during critical times as have all the coal fields in the country. This was done at the expense of our land and water. Now it is the country's turn to be responsible. An efficient and effective agency is in place in each county in the U. S. to proceed with abandoned mine land reclamation (RAMP). Please see that RAMP is fully funded and activated. We appreciate what you have done in the past and ask only that the 1977 act be fully and fairly implemented to address the abandoned mine land problems of the Broad Top coal field and all such areas in Pennsylvania and the nation.

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WYOMING
EXECUTIVE DEPARTMENT
CHEYENNE

ED HERSCHLER
GOVERNOR

November 30, 1984

Honorable James A. McClure
U. S. Senate
Appropriations, Interior & Related Agencies Chairman
361 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator McClure:

A draft report by the General Accounting Office has come to my attention. The report, "The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulating Coal Mining," makes recommendations that could cause havoc in western state reclamation programs and lower the quality of environmental regulation under the Surface Mining Act.

The General Accounting Office's report recommends that the Office of Surface Mining seek full recovery of its direct regulatory costs from operators and that the grants to states should be phased out or substantially reduced.

On behalf of Wyoming and the Governors of Utah, Colorado, New Mexico, and Montana, and the Public Service Commission of North Dakota, we find the GAO proposal seriously flawed. It should be rejected. While the principle of recovering government costs from the beneficiaries of government action has many valid applications, GAO's application of this principle to mine regulation is inappropriate.

First, the GAO report misunderstands who is the beneficiary of mine regulation. The recovery of cost for government regulation of mining is not comparable to the recovery of cost for other types of government services, such as Coast Guard rescue or navigation aids for yacht owners. GAO also ignores the externalities of mine regulation. There are clearly numerous beneficiaries of mine regulation. Good reclamation often results in improved wildlife habitat and better agricultural land; new cultural resource discoveries are made pursuant to the National Historic Preservation Act; new impoundments or solid waste disposal facilities are created for others' benefit; mining and reclamation research expands the knowledge of handling toxic materials and the management of many types of disturbed lands, etc. GAO does not account for any of these externalities.

Second, GAO has selectively applied the cost recovery principle to SMCRA activities. GAO did not propose that persons petitioning for

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the designation of lands unsuitable for mining nay the cost of processing the petition. Who should be charged for pre-determinations on alluvial valley floors? How should costs for cumulative hydrologic assessments which extend beyond the permit boundaries and benefit other operators be assessed? What about OSM's policy to pay attorney's fees? Should the cost of investigating alleged violations be borne by the persons making the allegations? In each of these instances, the imposition of a fee would have a chilling effect and substantially reduce the effectiveness and intent of the law.

Third, GAO's analysis is flawed in some cases and incomplete in others. The report's reference to the cost recovery for the operation of the Wyoming Industrial Siting Administration (not Commission as GAO reports), inaccurately describes that agency's limited cost recovery program. In fact, the Administration receives a general fund appropriation. Fees charged permit applicants are deposited into a special account for partial reconciliation purposes; however, the general fund never achieves full cost recovery. Post-siting monitoring and EIS review costs, for example, are covered by the general fund.

GAO's analysis of the impact of its proposal on coal production is incomplete and inadequate to support such a major policy recommendation. The discussion of potential regional shifts in coal production caused by cost recovery needs to be expanded. As an introduction to the degree of detail needed, GAO should consult the extensive analyses of coal production impacts of acid rain control proposals. In some regions of the West, such as Utah with high-cost underground mining and a severely depressed coal industry, permit fees may not be passed along by the operator. Instead, the operator would absorb these costs and in some cases be forced out of business. Similarly, companies mining only low-grade coals such as lignite, which have a slender profit margin at best, would be hard hit. In either case, regional production patterns would be shifted.

GAO has wrongly assumed uniform nationwide applicabilityof the Surface Mining Act and has failed to account for the higher regulatory costs imposed by mines on federal lands, such as coordination with various federal agencies (e.g. wildlife), NEPA compliance, etc. The suggestion of a uniform cents per ton figure sufficient to support the government's reclamation program may be severely misleading since it does not account for variations such as the larger mine sizes in the west, the frequency of mine plan revisions, etc. The suggestion also presupposes that OSM's support activities are of sufficient benefit to industry to justify industry paying for their cost. A homogenizing, broad brush analysis of this important issue is clearly inadequate.

Finally, the GAO report fails to consider the impact of its proposal on the operation of state programs. For example, what would be the impact of irregularity of the timing of the submission of permit

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applications on the stability of state regulatory programs and the state budgetary process? What would be the impact of a state dropping its cooperative agreement for regulation of mining on federal lands but maintaining the other parts of the program? This may be a likely occurrence to avoid double charging of operators on federal lands--especially in light of the recent decision by Judge Flannery. What would be the impact on a state agency where one of the minerals being regulated is subject to full cost recovery but others are not? In some cases, cost recovery might drive some mines out of business. With some companies being forced out of business in a state, the entire burden of financing an adequate state reclamation program will fall on the remaining firms, further straining their stability. Would not full cost recovery by the federal government force, for equity's sake, full cost recovery by states? This would make this environmental protection program totally dependent on revenues from the regulated parties. The historical precedent for having coal operators pay for their regulation resulted in the deterioration of state programs in some regions of the country. This destructive linkage was one of the reasons why a nationwide reclamation law was needed to assure adequate reclamation across the country.

For these reasons we oppose the recommendations in the draft GAO report. They represent an inappropriate application of the cost recovery principle. Adoption and implementation of the GAO recommendations will: 1) undermine the sound environmental principles embodied in the Surface Mining Act; 2) place an even greater burden on industry than industry already bears; and 3) force the coal-mining states and their citizens to assume an inequitable share of the cost of a federal regulatory program from which everyone should benefit.

Thank you for your attention to this troublesome matter. Please feel free to contact me if you have any questions or concerns.

Sincerely,

Enclosure

cc: Secretary William P. Clark
Director John Ward
Comptroller C. T. Conover
Honorable Sidney R. Yates
Honorable Morris K. Udall
Honorable Mike Synar
Governor Scott M. Matheson
Governor Richard D. Lamm
Governor Ted Schwinden
Governor Toney Anaya
Bruce Hamen
John Larson

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STATE OF WYOMING
OFFICE OF THE GOVERNOR
CHEYENNE 82002

ED HERSCHLER
GOVERNOR

January 4, 1985

Honorable Alan K. Simpson
U. S. Senator
SH-709 Hart Senate Office Building
Washington, D.C. 20510

Honorable Malcolm Wallop
U. S. Senator
SR-206 Russell Senate Office Building
Washington, D.C. 20510

Honorable Dick Cheney
U. S. Representative
225 Cannon House Office Building
Washington, D.C. 20515

Dear Senator Simpson:

As you may know, the allocation formula for distributing revenue from the federal share of the Abandoned Mined Land (AML) Reclamation Fund has been the focus of intense debate over the past several years. I certainly have been a vocal part of this debate, contributing much to the increased tension between the Department of Interior and my office. However, I believe that the determination of which states and tribes receive how much of the Secretary's "discretionary" fund, estimated to be over a billion dollars, is perhaps the single most significant issue related to the AML program. Further, I believe it is an issue which demands your attention and leadership to resolve.

The Office of Surface Mining (OSM) has developed an allocation policy which purports to disburse money based on the need for reclamation. However, that need is measured by the National Abandoned Mined Land Inventory. Most states, including Wyoming, disagree that this Inventory is an appropriate measure of need.

The National Inventory is not uniform among the states, largely due to the fact that it was prepared by different private and public contractors with varying amounts of expertise. For Wyoming this is conceded by OSM in the

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Annual Report to Congress on Wyoming's Permanent Regulatory Program (enclosed and highlighted). With these recognized problems, I must conclude that the National Inventory constitutes an imprecise and unacceptable measurement of need for reclamation money.

As the enclosure indicates, OSM is advancing a program to update the Inventory. I fail to see that this will remedy the problems with the Inventory. Further, it will continue to divert our energy from the objective of reclaiming abandoned mines. Due to the delays in approving the title V state regulatory programs, we are only a few years into a reclamation program that is more than seven years over. We need to concentrate our attention on land reclamation, or all we will have at the end of the program is information on what didn't get done.

With your assistance I am confident that OSM can be persuaded to implement an alternative allocation policy. I believe the proposal recommended by Governor Ted Schwinden is far superior to the current OSM policy. Governor Schwinden's proposal is as follows:

> First, all states with historic long-term coal production, such as Pennsylvania, Ohio, West Virginia, Virginia, Kentucky, Tennessee, Indiana, and Illinois, should be guaranteed at least 100 percent of the AML funds generated by their current operations. Such states contain the substantial portion of mine-damaged lands and waters that Congress intended to address under the Abandoned Mine Land Program.
>
> Second, western coal-producing states that generate significant revenue for the Abandoned Mine Land Program--New Mexico, Wyoming, Colorado, Utah, North Dakota, and Montana--should receive up to 70 percent of the Abandoned Mine Land funds they generate. That total represents the 50 percent allocation specified under Section 402(g)(2) and an additional 10 to 20 percent from the discretionary funds.
>
> Third, for the balance of the coal-producing states, a minimum of $1 million of Abandoned Mine Land funds should be granted to each state annually to assure the viability of programs in areas of declining or relatively low coal production.

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This proposal has the support of many coal-producing states and is codified in a resolution passed by the Interstate Mining Compact Commission. I would commend it to you as a point from which discussions with OSM could begin on reasonable allocation alternatives to the National Inventory.

In conclusion I must say that my position on this issue is not compelled by greed. Wyoming can document more qualified reclamation projects than it can finance with State-share moneys. Further, we are continually submitting projects to OSM for approval. Over the life of the tax, Wyoming will contribute approximately $300 million to the Secretary's "discretionary" fund. We certainly should receive at least the minimum recommended by Governor Schwinden for our own AML needs.

Thank you in advance for your time and attention to this important matter. Please feel free to contact my office if you should have any questions or concerns.

With best wishes for a productive and prosperous new year, I am

Yours sincerely,

EH:nfp

Enclosure

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STATEMENT OF ED KELLEY, DIRECTOR
MINING AND MINERALS DIVISION
ENERGY AND MINERALS DEPARTMENT
STATE OF NEW MEXICO

The State of New Mexico submits these written comments for the record of the hearing on the Office of Surface Mining (OSM) budget. Several issues have arisen over the past year which have substantially impacted the regulation of surface coal mining in the State of New Mexico. My testimony will discuss the overall funding levels of both the regulatory and abandoned mine land programs for the states. I will offer my suggestions for the funding levels necessary for the State of New Mexico for FY 86. I intend to address both Title IV and Title V Program problems. My statements will first address Title IV Program.

ABANDONED MINE LAND PROGRAM
TITLE IV ISSUES

As many of you know New Mexico's Abandoned Mine Land (AML) Program experienced a very slow start. Today I can confidently state the New Mexico AML is now firmly established and well on the way to meeting the Program reclamation objectives of abating hazards relating to past coal mining practices. The AML Program has a bill currently pending before the New Mexico Legislature to authorize adoption of an Emergency Abandoned Mine Land Program. The Program has completed three (3) major projects and a fourth project is now nearing completion. The invitation for bids have been released for the Madrid Project and a contract should be awarded on this Project by March 20, 1985.

The Program is projecting the completion of five (5) major projects by October 31, 1985. The AML Program made tremendous strides during the last fiscal year. I am pleased to tell you the major projects completed have been very successful and without many of the problems experienced by the Office of Surface Mining (OSM) at the Sky City Emergency Project in New Mexico. The OSM budget is recommending a large reduction in the AML Program funding levels. The justification for this reduction in funding is not clear and I urge this Committee to question such a reduction and to require a more detailed justification before such cuts are considered. New Mexico's AML Program, like most state programs, is now experiencing the growth necessary to mature into the kind of program Congress had envisioned by the passage of the AML legislation. It would be most unfortunate for the experience and expertise now within the states' programs to suffer serious setbacks due to funding cuts.

New Mexico, during the past fiscal year, has carefully reviewed the AML Program objectives and has started substantial Program planning to quickly but effectively reduce the backlog of the State share fees. With the progress of New Mexico's AML Program I am encouraged the reduction of backlogged state share fees should be completed within eighteen (18) to twenty-four (24) months. Once this goal is achieved the Program anticipates a leveling off of construction starts equal to an annual program appropriation at the level of the state's collection of AML fees.

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New Mexico has selected this strategy to take advantage of reduced construction costs during the current economic slump. By taking this approach we feel we are maximizing every dollar spent in the Program. This also has a much needed secondary benefit of providing greatly needed jobs in the very depressed construction industry of New Mexico.

Committee members, I am strongly opposed to OSM's budget recommendations for the states' AML programs. I urge you to consider these proposed reductions carefully and reject them. The AML programs conducted by the states are abating hazards daily that threaten human life and animals. This program should be allowed to accomplish the goals Congress established without the budget restraints that OSM has proposed.

ADMINISTRATION AND ENFORCEMENT PROGRAM
TITLE V ISSUES

New Mexico has a conditionally approved State Program and has assumed primacy for the Regulatory Program. The Regulatory Program is responsible for Permitting, Inspection and Enforcement of surface coal mining within the State. We have developed a very competent technical staff and have greatly improved the overall quality of the Regulatory Program in the last year. New Mexico has thirteen (13) inspectable units within the State. Seven (7) mines have been permitted or repermitted under the Permanent Program. The OSM budget recommendations for funding of the State Regulatory Programs raises several issues that I would like to address.

FUNDING OF THE STATE REGULATORY PROGRAM

The New Mexico Regulatory Program during the last fiscal year received approximately $571,085.00 in Federal funds. This funded 72.33% of the Regulatory Program expenses. The Program has 13.5 full time personnel. Any reduction in the funding level to the State Program will severally impact the effectiveness of the State Program. The funding level for the New Mexico Program should remain the same or be increased. OSM, in the oversight process, encouraged the State to seek additional qualified staff members to improve the Regulatory Program staff's expertise. This would provide more effective regulation but obviously such improvements will also require additional funding.

The Administration and Enforcement Program, after a serious struggle, has at last developed a solid "critical mass" of those key professionals necessary to the operation of a successful regulatory program. Any reduction in Program funding would threaten the Program staffing level. The staff of this Program is small and the loss of even a single professional staff member would severally hamper Program effectiveness.

I would urge this Committee to review the very positive oversight review of the Administration and Enforcement Program and increase the funding level so the Program may continue to improve as it has over the past twelve (12) months.

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INDIAN JURISDICTION

The State of New Mexico has for over a decade been committed to the regulation of surface coal mining operations within the State. New Mexico has consistently regulated coal mine operations since 1973. The State's regulatory effort has covered all lands within the State of New Mexico including Indian mines. The State is committed to the continuation of this regulation.

This regulation on Indian lands is particularly important to New Mexico because Utah International Inc.'s Navajo Mine and Pittsburg and Midway Coal Mining Company's McKinley Mine are at least in part situated on the Indian Reservation. The two (2) mines are the largest mining operations within New Mexico. Both mines are located in the San Juan Basin area of New Mexico.

The new Indian Regulations have created substantial confusion in the New Mexico Regulatory Program. The Regulations have defined "Indian lands" in a very general way. This definition has then been redefined by OSM technical staff and the State Regulatory Authority receives mixed signals on what is and what is not an "Indian mine".

A seemingly simple problem, is it an Indian mine or not, now becomes a complex issue which may result in substantial litigation. One such example is the New Mexico De-Na-Zin Mine. The Mine has two (2) coal leases. Within the coal leases there is some allottee land.

However, the allottee land is not within the areas permitted to be coal mined. Then within the permitted area there is Bureau of Land Management land currently leased to the Bureau of Indian Affairs, who have granted a Navajo sheep herder a grazing lease. The herder has moved on to the land covered by this grazing lease and is now an illegal occupant. OSM officials have taken the position that because of the Navajo's grazing lease this is an "Indian mine".

Another brief example to demonstrate the complexity of this "Indian's land" question. The Gallo Wash Mine in New Mexico has a mineral estate held by the State and private citizens. But the Navajo Tribe holds title to a portion of the surface estate. This interest, according to OSM, would make this location an "Indian mine".

The regulation of these lands must be uniform. The regulatory authorities must agree on what these lands are. Often times even the mine owner does not know how his own mine should be classified.

The mine owners of New Mexico have repeatedly sought one uniform regulatory authority. The State of New Mexico would urge you to direct OSM to work toward a resolution of this most frustrating problem. I would urge that this problem be considered a priority item that needs prompt resolution. Aside from these definitional problems other serious enforcement problems have been created by the Indian lands question. Many mines in New Mexico lapped over boundary lines and are part Indian and part State mines. The mine operations continue irrespective of these boundaries. The violations also do not stop at these arbitrary boundaries. Enforcement efforts must obviously be of the whole mine as an individual unit. Enforcement in a checkerboard jurisdictional area will obviously fail if the State and OSM do not cooperate in the inspection an enforcement on the mine. I urge you to consider these problems and direct OSM to work with states like New Mexico so that the environment is protected from adverse impacts of coal mining practices irrespective of surface or mineral ownership.

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Feb 20, 1985

Rep. Morris K. Udall, Chair
House Interior Committee
1327 Longworth House Office Bldg.
Washington, D.C. 20515

Dear Rep. Udall,

Please include this letter as part of the record of the Hearing on Review of the OSM Fiscal Budget.

Our membership resides in the coalfield regions of Tennessee, where we have long been active in advocating strong legislation to regulate activities of the surface-mining industry in this state. During the 1984 Legislative Session, the Tennessee legislature gave up primacy and opened the way for a federal program. OSM jurisdiction began in Oct.1, 1984.

The state introduced new legislation to regain primacy just last week (Feb. 14, 1985), on the day before the final filing date for all proposed 1985 legislation. The industry, represented by F.A.C.T. (Facts About Coal in Tennessee), has indicated that it will not support state primacy at this time. In addition, leaders of the pertinent legislative committees indicate little interest in the state bill's passage in 1985 Session. In short, it appears highly unlikely that Tennessee will regain primacy in FY 86.

It is our understanding that the OSM budget for FY 86 does not include funding for a federal program in Tennessee. The current state of affairs indicates that a federal program in Tennessee will be necessary for FY 86 and beyond; any assumption that Tennessee will be able to pass appropriate legislation and develop an adequate program by June of 1986 is not based on reality.

I urge you to incorporate monies for a Tennessee federal program into the OSM Fiscal Budget for FY 86. If, by some miracle, Tennessee regains primacy before that time, no harm will be done and the monies can be re-allocated. Please don't take a chance on leaving Tennessee citizens unprotected.

Thank you.

Sincerely,

Annetta Watson

Annetta Watson, Chair
Stripmine Committee

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